PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

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June 5, 2019

TO PARTIES OF RECORD IN APPLICATION 07-12-026

This proceeding was filed on December 20, 2007, and is assigned to Commissioner Liane M. Randolph and Administrative Law Judge (ALJ) Mary McKenzie and ALJ W. Anthony Colbert. This is the decision of the Presiding Officers, ALJ McKenzie and ALJ Colbert.

Any party to this adjudicatory phase of this proceeding may file and serve an Appeal of the Presiding Officers' Decision within 30 days of the date of issuance (i.e., the date of mailing) of this decision. In addition, any Commissioner may request review of the Presiding Officers' Decision by filing and serving a Request for Review within 30 days of the date of issuance.

Appeals and Requests for Review must set forth specifically the grounds on which the appellant or requestor believes the Presiding Officers' Decision to be unlawful or erroneous. The purpose of an Appeal or Request for Review is to alert the Commission to a potential error, so that the error may be corrected expeditiously by the Commission. Vague assertions as to the record or the law, without citation, may be accorded little weight.

Appeals and Requests for Review must be served on all parties and accompanied by a certificate of service. Any party may file and serve a Response to an Appeal or Request for Review no later than 15 days after the date the Appeal or Request for Review was filed. In cases of multiple Appeals or Requests for Review, the Response may be to all such filings and may be filed 15 days after the last such Appeal or Request for Review was filed. Replies to Responses are not permitted. (See, generally, Rule 14.4 of the Commission's Rules of Practice and Procedure at www.cpuc.ca.gov.)

If no Appeal or Request for Review is filed within 30 days of the date of issuance of the Presiding Officer's Decision, the decision shall become the decision of the Commission. In this event, the Commission will designate a decision number and advise the parties by letter that the Presiding Officer's Decision has become the Commission's decision.

/s/ ANNE E. SIMON
Anne E. Simon
Chief Administrative Law Judge

AES:mph
Attachment

Decision **PRESIDING OFFICERS' DECISION OF ALJ MCKENZIE AND ALJ COLBERT (Mailed 6/5/2019)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Calaveras Telephone Company (U1004C), Cal-Ore Telephone Co. (U1006C), Ducor Telephone Company (U1007C), Happy Valley Telephone Company (U1010C), Hornitos Telephone Company (U1011C), Kerman Telephone Co. (U1012C), The Ponderosa Telephone Co. (U1014C), Sierra Telephone Company, Inc. (U1016C), The Siskiyou Telephone Company (U1017C), Volcano Telephone Company (U1019C), and Winterhaven Telephone Company (U1021C) for Ratemaking Determination regarding Dissolution of Rural Telephone Bank.	Application 07-12-026

PRESIDING OFFICERS' DECISION REGARDING ALLEGED VIOLATIONS BY CERTAIN INDEPENDENT SMALL LOCAL EXCHANGE CARRIERS

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PRESIDING OFFICERS' DECISION REGARDING ALLEGED VIOLATIONS BY CERTAIN INDEPENDENT SMALL LOCAL EXCHANGE CARRIERS

Summary

This decision finds that eight of California's independent local exchange carriers, the Respondents[1] to the instant Order to Show Cause, violated Rule 1.1 of the Commission's Rules of Practice and Procedure.[2] Respondents did so by failing to disclose, within the application filed in this proceeding on December 20, 2007, the full amount of Rural Telephone Bank stock dissolution proceeds, as directed to do so by the Commission. Disclosure of the full amount of the redeemed stock proceeds in the initial application was material to the Commission's ability to make an equitable, just and reasonable ratemaking determination. Respondents' incomplete disclosure was done unilaterally and collectively by all eight companies, and with intent, thereby providing the Commission with false and misleading information. Respondents' decision to disclose only a small portion of the Rural Telephone Bank stock proceeds within the application, and the manner in which they did so, was an artifice meant to mislead the Commission and severely harmed the regulatory process. The violations continued for nearly two years, until Respondents finally revealed the full amount of Rural Telephone Bank stock dissolution proceeds, despite several

[1] The eight Independent Local Exchange Carriers who are Respondents in the instant Order to Show Cause are: Calaveras Telephone Company (Calaveras), Cal-Ore Telephone Company (Cal-Ore), Ducor Telephone Company (Ducor), Kerman Telephone Company (Kerman), Ponderosa Telephone Company (Ponderosa), Sierra Telephone Company (Sierra), Siskiyou Telephone Company (Siskiyou), and Volcano Telephone Company (Volcano).

[2] Rule 1.1: "Any person who signs a pleading or brief, enters an appearance, offers testimony at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law."

opportunities to present a full showing in response to inquiries from the Commission.

We therefore impose fines for Rule 1.1 violations on each of the eight individual Respondents, with fines totaling $2,752,000. We adjust the fines to include a credit with interest for fines previously paid for violation of the California High Cost Fund-A rules, a credit for fines previously paid for Rule 1.1 violations, and a 25% reduction as offsetting mitigation reflective of five Respondents' partial disclosure. The resulting net total fines are $2,017,352. This decision also orders several Respondents to return $3,037 to the ratepayers pursuant to a decision of the Court of Appeals for the Fifth Appellate District.

This proceeding is closed.

1. Background and Procedural history

1.1. Background

In 1971, Congress created the Rural Telephone Bank (RTB) as part of the U.S. Department of Agriculture. The purpose of the RTB was to make capital available to rural telephone providers at reasonable costs to allow infrastructure investment. Pursuant to Pub. Util. Code[3] Sections 817 and 818, California's rural telephone providers sought and received Commission authorization to enter into RTB loan agreements. Between 1972 and 2006, they obtained substantial loans from the RTB. As a condition for receiving the loans, they were required to allocate 5% of each loan to the purchase of RTB stock.

[3] All statutory references in this decision are to California Public Utilities Code, unless otherwise specified.

California's rural telephone providers obtained three types of shares from the RTB:

1. *Class B Mandatory stock purchase* for RTB loans. Respondents were required to purchase Class B shares in the amount of 5% of the loan obtained from the RTB.[4] The earliest purchase was by Volcano Telephone Company (Volcano) in 1972 and the latest purchase was by Kerman Telephone Company (Kerman) in 2005.[5]
2. *Class B Patronage refunds.* Respondents obtained additional Class B shares as patronage refunds when the RTB's interest income exceeded its expenses, reserve requirements, and obligatory shareholder payments.[6] These were paid annually based on the amount of interest that the Respondent paid that year.[7]
3. *Class C Purchased stock*. Four Respondents (Cal-Ore Telephone Company (Cal-Ore), Kerman, Siskiyou Telephone Company (Siskiyou), and Volcano) chose to purchase Class C shares.[8] The earliest purchase was by Siskiyou in 1971 and the latest purchase was by Kerman in 1993.[9]

[4] June 6, 2017 Order to Show Cause Ruling at 2-3.

[5] Response of Respondents to Administrative Law Judge's (ALJ's) Ruling Granting Motion to Reopen the Record and Directing Further Filing, Nov. 19, 2009, Attachment A.

[6] 7 USC § 946 (g).

[7] Response of Respondents to ALJ's Ruling Granting Motion to Reopen the Record and Directing Further Filing, Nov. 19, 2009, Attachment A; see also Reporter's Transcript (RT) Vol. 9 1637:9-17.

[8] Response of Respondents to ALJ's Ruling Granting Motion to Reopen the Record and Directing Further Filing, Nov. 19, 2009, Attachment A.

[9] Response of Respondents to ALJ's Ruling Granting Motion to Reopen the Record and Directing Further Filing, Nov. 19, 2009, Attachment A.

In 1997, the Commission issued decisions and adopted resolutions (referred to herein as 1997 Resolutions) specifying:

> "[w]hen [an ILEC] redeems any Rural Telephone Bank stock, it shall file an application with the Commission to request a determination for the gain on the redemption of the Rural Telephone Bank stock."[10]

In 2006 the Rural Telephone Bank dissolved. At par stock redemption payments occurred on April 10-11, 2006 and totaled over $28 million. On November 13, 2007, residual amounts were distributed that totaled $634,176.

1.2. Proceeding History and Initial Order to Show Cause

On December 20, 2007, eleven California independent local exchange carriers (ILECs or Applicants) filed Application (A.) 07-12-026 (referred to herein as 2007 Application or Application) seeking a Commission ratemaking determination in light of the redemption of the RTB stock that occurred in connection with the dissolution of the RTB.[11] In the 2007 Application, the ILECs stated they were seeking the Commission's ratemaking determination in light of the redemption of the RTB stock pursuant to ordering paragraphs in some small telephone company rate case resolutions issued by the Commission during the previous ten years.[12] Applicants proposed to distribute $3,037 of RTB stock

[10] Resolution T-16005, April 3, 1997 (Ponderosa); Resolution T-16003, May 6, 1997 (Kerman), Resolution T-16006, April 23, 1997 (Siskiyou); Resolution T-16007 (Volcano); see also Resolution T-16969, January 26, 2006 (Siskiyou). Respondents state that because this language was in some of the general rate case resolutions, each ILEC elected to join in the A.07-12-026 at 6.

[11] A. 07-12-026, ILECs' Application for Ratemaking Determination, 1:7-9.

[12] *Id.*, 1:9-11.

redemption proceeds to their customers. After several staff requests for more information,[13] the ILECs disclosed, on November 19, 2009 (in response to an Administrative Law Judge's (ALJ) Ruling and nearly two years after the initial application), that they received a total of $31,299,810.13 in at par and residual stock redemptions.[14] The bulk of the proceeds were received as patronage shares, worth more than $25,000,000 and characterized by the ILECs as return of interest paid.[15]

On June 28, 2010 in D.10-06-029, the Commission determined that the total RTB stock redemption proceeds received at par and in redemption should be credited back to ratepayers (with the credit being the jurisdictionally separated intrastate portion of $31,299,810.13). In addition, D.10-06-029 included an Order to Show Cause (OSC) why the ILECs should not be subject to penalties for: 1) violating Rule 1.1 of the Commission's Rules of Practice and Procedure when the ILECs failed to disclose total stock redeemed as required by the 1997 resolutions and failing to be forthcoming with relevant information; and 2) violating the Commission's California High Cost Fund A (CHCF-A) rules.[16]

The ILECs filed an Application for Rehearing of the June 28, 2010 Decision (D.10-06-019). The Commission denied the Application for Rehearing and the matter was considered by the Court of Appeals for the Fifth Appellate District

[13] *See* Public Advocates Office (Cal Advocates) Opening Brief (OB) at 5-6.

[14] *See* Response of [Respondents] to ALJ's Ruling Granting Motion to Reopen the Record and Directing Further Filing, November 19, 2009; also D.10-06-029 at 11.

[15] S*ee* Respondents' Reply Brief at (RB) at 5.

[16] D.91-09-042 modifying D.91-05-016 (setting out requirements for CHCF-A advice letter filings). CHCF-A pays eligible applicants the difference between their revenue requirement and the amount that could be recovered from customers with rates set at 150% of urban area rates.

(*Ponderosa* Court or Court).[17] On July 5, 2011, the Court issued its opinion annulling D.10-06-029 because the Court found that "the Commission erred in allocating both the purchased share proceeds and the patronage share proceeds to the ratepayers."[18] The Court determined that the allocation of at par stock value to ratepayers constituted an illegal appropriation of the ILECs' property. The Court further determined the appropriation adjusted rates previously established in general ratemaking proceedings and thus was a violation of the retroactive ratemaking doctrine.[19] Importantly, however, the Court did not alter the Commission's decision mandating that the ILECs show cause as to why they should not be fined for violating Rule 1.1 and the CHCF-A rules.

The matter was remanded back to the Commission for further proceedings consistent with the Court's decision. Accordingly, the Commission ordered all amounts previously credited to ratepayers be returned to the ILECs, pending further Commission instructions.[20]

On March 10, 2011, in D.11-03-030, the Commission fined the eleven Applicants a total of $355,000 for violating Rule 1.1 and the Commission's CHCF-A rules.[21] All Applicants paid the fines. Eight of the eleven filed an Application for Rehearing of the March 10, 2011 Decision, which was granted in

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[17] *Ponderosa v. Pub. Util. Comm'n*, 197 Cal.App.4th 48, 56-60, 64 (2011) (ordering remand to the Commission for disposition of the shares under the "gain on sale" rules, review denied, Cal. Supreme Court Case No. S195658, Oct. 19, 2011). This decision will refer interchangeably to the '*Ponderosa* Court' or 'Court'.

[18] *The Ponderosa Telephone Co. v. Public Utilities Commission of the State of California* (2011) 197 Cal.App.4th 48, 51.

[19] *Id.* at 61.

[20] D.12-06-003.

[21] *See* D.11-03-030 at 2 (detailing amount and reason for fines totaling $355,000). Happy Valley Telephone Company (Happy Valley), Hornitos Telephone Company (Hornitos), and Winterhaven Telephone Company (Winterhaven) were subject to penalties totaling $60,000 for

D.11-12-057.[22] These eight companies are the Respondents addressed in this decision.

1.3. Current OSC

On October 8, 2015, the assigned Commissioner issued an amended scoping memo to address both the rehearing of the March 10, 2011 Decision (D.11-03-030) and the remaining issue remanded back to the Commission by the Court (the $3,037 to be distributed to ratepayers). On June 9, 2017, the assigned Commissioner and ALJ issued an OSC Ruling. The OSC Ruling ordered eight independent local exchange carriers (Respondents) to demonstrate why the companies should not be sanctioned by the Commission for violation of:

> Rule 1.1 of the Commission's Rules of Practices and Procedure for failing to disclose Rural Telephone Bank (RTB) stock redemption proceeds included as revenue, as well as the resulting actual rate of return realized by Respondents in the year they received the proceeds from the RTB stock redemption.[23]

Thus, along with the pending exception issue remanded by the Court, the instant proceeding is, in essence, a continuation of the June 24, 2010 OSC issued in D.10-06-029. That OSC is now narrowed to the eight ILECs whose application

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violating Rule 1.1. These three companies paid those penalties but did not join in the subsequent Application for Rehearing and are not Respondents to the current OSC. Calaveras Telephone Company, Cal-Ore Telephone Company, Ducor Telephone Company, Kerman Telephone Company, the Ponderosa Telephone Company, Sierra Telephone Company, Inc., the Siskiyou Telephone Company, and Volcano Telephone Company were subject to penalties totaling $295,000 for violating both Rule 1.1 and CHCF-A rules.

[22] *See* D.11-12-057. The ILECs paid the fines imposed for both violations of Rule 1.1 and the CHCF-A filing rules. The ILECs penalized for violating the CHCF-A rules did not pay the interest levied on the fine amounts in D.11-03-030.

[23] Assigned Commission and Assigned Administrative Law Judge's Ruling Directing Respondents to Show Cause Why They Should Not be Sanctioned by the Commission for Violation of Rule 1.1 (OSC) June 9, 2017. This is an adjudicatory phase of this proceeding.

for rehearing of D.11-03-030 was granted. This proceeding is that rehearing. Eleven days of evidentiary hearings were held on April 17, 18, 19, May 2, 3, 4, 17, 18, and July 2, 3, 5, 2018. Opening briefs were filed August 24, 2018. Reply briefs were filed September 26, 2018. Respondents requested oral argument, which was held November 5, 2018 before the Commission *en banc*.

2. Legal and Regulatory Framework

2.1. Constitutional and Statutory Authorities

The Commission is a regulatory body of constitutional origin and derives its powers from the California State Constitution and the California Legislature.[24] The Commission has jurisdiction over California telephone companies. Pub. Util. Code Section 216, subsection (a), defines "public utility" to include "every telephone corporation," and subsection (b) provides that "… a public utility [is] subject to the jurisdiction, control, and regulation of the commission and the provisions of this part."

2.2. Jurisdiction Over Violations and Penalties

Rule 1.1 of the Commission's Rules of Practice and Procedure states:

> Any person who signs a pleading or brief, enters an appearance at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission or its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law.

A Rule 1.1 violation occurs when there has been a "lack of candor, withholding of information, or failure to correct information or respond fully to

[24] *People v. Western Airlines*, 42 Cal. 2d 621, 634, citing Article XII, section 23 of California Constitution.

data requests."[25] A Rule 1.1 violation exists as a result of non-disclosure of information that was requested by the Commission.[26] Non-disclosure does not have to be intentional, and it may occur due to carelessness, ignorance or mistake.[27]

In addition, the Commission also has specific statutory authority to impose fines under Sections 2107 and 2108.[28] Section 2107 stated (during the time the violations occurred):

> Any public utility that violates or fails to comply with any provision of the Constitution of this state or of this part, or that fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars ($500), nor more than fifty thousand dollars ($20,000) for each offense.[29]

Section 2108 states:

> Every violation of the provisions of this part or of any part of any order, decision, decree, rule, direction, demand, or requirement of the commission, by any corporation or person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be a separate and distinct offense.

When D.11-12-057 was issued in 2011, Section 2107 provided that a person or entity who violated Rule 1.1 may be sanctioned no less than $500 and no more

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[25] D.13-12-053 at 21.

[26] D.01-08-109 at 18.

[27] *See* D.92-07-078, D.92-07-084, D.93-05-020, D.01-08-019, and D.13-12-053.

[28] *See, e.g.*, *Pacific Bell Wireless, LLC v. Public Utilities Com. (Cingular)* (2006) 140 Cal. App. 4th 718.

[29] Between 1994 and 2012, the maximum fine was $20,000 per offense. On January 1, 2013, the maximum penalty for each offense was increased to $50,000. On January 1, 2019, the maximum penalty for each offense was raised to its current level of $100,000.

than $20,000 for each offense.[30] Additionally, under Section 2108, every violation of the Commission's rules can be considered a separate and distinct offense, and in the case of continuing violation, each day shall be a separate and distinct offense. The Legislature has granted to the Commission the authority, responsibility and discretion to determine what amounts to a violation, what fine from the range of penalties is appropriate, and when the violation constitutes a a continuing one.[31] Moreover, the California Court of Appeal has held that a persistent failure to act must be a continuing violation because otherwise it would eviscerate the Commission's "power to require self-reporting by virtually destroying the Commission's power to sanction noncompliance."[32]

Despite the lengthy record in this 11-year-old case, the OSC issues before the Commission today are straightforward and are not affected by the *Ponderosa* Court's reversal and remand of D.10-06-029. Rather, they are the rehearing of D.11-03-030 that found violations of Rule 1.1. The *Ponderosa* decision does not bar our inquiry into whether certain ILECs violated Rule 1.1 in filing A.07-12-026 since the Rule 1.1 issue was never before the Court.

2.3. The Issues As Framed by the Current OSC

The focus of the OSC is on evaluating the allegations by the Commission's Public Advocates Office[33] (Cal Advocates) regarding Respondents' lack of disclosure and resolving the rehearing issues as required by D.11-12-057 (which granted rehearing of D.11-03-030).[34] Further, the OSC requires Respondents to

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[30] When D.11-12-057 was issued in 2011, the maximum penalty for each offense was $20,000.

[31] *Pacific Gas & Electric Co. v. Public Utilities Com.* (2015) 237 Cal.App. 4th 812, 857.

[32] *Id*.

[33] Formerly named Office of Ratepayer Advocates (ORA).

[34] OSC, June 9, 2017 at 10.

show why they should not be sanctioned under Rule 1.1 and the CHCF-A decision, D.91-02-042, for failure to disclose RTB proceeds in (a) their original Application, (b) their CHCF-A filings, and (c) in the following filings (as listed on page 14 of the OSC):

1. Respondents' Advice Letters, Financial Statements and Means Test for calendar year 2006;
2. Respondents' Advice Letters, Financial Statements and Means Test for calendar year 2007;
3. Respondents' Annual Reports for calendar year 2006;
4. Respondents' Annual Reports for calendar year 2007;
5. Respondents' Rate Case Filings using 2006 and 2007 calendar year financial data for test years 2008, 2009, and 2010;
6. Small ILECs' Audited Financial Statements for calendar year 2006; and
7. Small ILECs' Audited Financial Statements for calendar year 2007.[35]

The questions raised by the OSC are essentially as follows: was there adequate notice to Respondents that they had a duty to report the full amount of the RTB stock dissolution proceeds to the Commission in the application directed to be filed with the Commission when any RTB stock was redeemed, CHCF-A filings, or various documents listed by the OSC? If not, no penalties are warranted. If yes, was there adequate disclosure by Respondents in any of the documents where such disclosure was required? If not, and the nondisclosure is material and rises to the level of a Rule 1.1 violation, then the five-factor penalty assessment identified in D.98-12-075 will be applied for each Respondent for each nondisclosure to determine an appropriate fine.

[35] OSC at 14.

2.4. Burden of Proof and Standard of Proof

In an OSC proceeding, where the Commission has set forth allegations and a prima facie case based on record evidence, the Respondent has the burden of showing why the Commission should not take the proposed legal action.[36] That is the case in this OSC proceeding. The existing record[37] establishes a prima facie case by a preponderance of the record evidence that Respondent(s) more likely than not violated a Commission rule or order in failing to disclose the full amount of RTB stock redeemed when the RTB dissolved. The burden of proof is on Respondents to show that the prima facie case based on record evidence is invalid.

Respondents have argued[38] that the burden of proof is on Cal Advocates to show a Rule 1.1 violation. This argument fails since the case cited by Respondents lacked any record evidence and is therefore distinguishable.[39] In sharp contrast, this case has extensive existing record evidence that supports the issuance of the OSC in D.10-06-029 and the subsequent OSC Ruling, thereby placing the burden of proof to Respondents. Specifically, the OSCs required Respondents to show why they should not be sanctioned under Rule 1.1 and the

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[36] OII & OSC Re: Long Distance Direct, Inc., (I.99-06-037). June 24, 1999 at 3; see also RT Vol. 1, 5: 14-28. Further, *see* D.16-12-003 at 81-91 (wherein the Commission established a prima facie case for a penalty without opening a separate OII or OSC, and placed the burden on the utility in a subsequent penalty phase of that proceeding to show why it should not be penalized), and March 28, 2017 ALJ Ruling in that same proceeding (addressing prima facie case in D.16-12-003 and the utility's burden of proof). Also *see* D.15-04-008 (wherein the Commission had denied a motion to initiate a separate OII or OSC proceeding regarding a utility's alleged violation of Rule 1.1, by February 21, 2014 ALJ Ruling opened the OSC based on a preponderance of the record evidence, and ordered the utility to show why it should not be sanctioned).

[37] *See* PHC -3, RT 153: 22-28, 154: 1-11.

[38] Respondents' OB at 18-19, RB at 2.

[39] Respondents cite *Cont'l Ins. Co. v. Columbus Line, Inc.* (2003) 107 Cal.App.4th 1190, 1195. *See* Cal Advocates' RB at 3.

CHCF-A Decision for failure to disclose RTB proceeds in their 2007 Application and other filings listed above, whether or not such failure is intentional.[40]

The standard of proof that must be met to show a Rule 1.1 violation is by the preponderance of the evidence.[41] Preponderance of the evidence is defined in terms of probability of truth, *e.g.,* such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth.[42] The preponderance of the evidence standard simply requires the trier of fact to believe that the existence of a fact is more probable than its nonexistence.

The claim of a Rule 1.1 violation must initially be established "by a preponderance of the evidence."[43] This claim was established by a preponderance of the evidence as found in both D.10-06-029 and the June 9, 2017 assigned Commissioner and ALJ OSC. To rebut the claim of a Rule 1.1 violation, Respondents must show, based on a preponderance of the evidence, that there was no duty to fully disclose the RTB stock redemption proceeds to the Commission in any of the filings listed in the OSC, or, if there was such a duty, that Respondents adequately disclosed the RTB stock redemption proceeds. Unless a Respondent shows good cause by a preponderance of the evidence why the proposed action should not be taken, the Commission will take the proposed action.[44]

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[40] *See Pacific Gas & Electric Co. v. Public Utilities Com.* (2015) 237 Cal.App.4th 821, 846.

[41] *See, e.g.*, D.16-01-014.

[42] D.08-12-058, citing Witkin, Calif. Evidence, 4th Edition, Vol. 1, 184.

[43] 49 CPUC2d at 190, citing to D.90-07-029 at 3-4.

[44] OII & OSC Re: Long Distance Direct, Inc., June 24, 1999 (I.99-06-037) at 3.

3. Respondents Were Not Required to Disclose the RTB Proceeds in the Filings Listed on Page 14 of the OSC or in the CHCF-A Filings

Based on the entire record in this case, including more than two weeks of evidentiary hearings in 2018, and applying the preponderance of the evidence standard, we agree with Respondents that there is no requirement in the law or past Commission decisions for disclosure of RTB proceeds in the seven filings listed on page 14 of the OSC (summarized above in Section 2.3). We have reviewed the relevant orders and rules, and find no language clearly and specifically ordering such disclosure. Thus, we find no basis for sanctions regarding Respondents' failure to disclose the RTB proceeds in those filings.

Similarly, we agree with Respondents that they had no duty to disclose the RTB stock redemption proceeds in CHCF-A filings. D.11-03-030 penalized Respondents for failing to disclose RTB stock redemption proceeds in their annual CHCF-A filings. In their 2011 rehearing application, Respondents argued that although the Commission concluded in D.11-03-030 that Respondents violated D.91-09-042 (regarding necessary CHCF-A filings), the Commission failed to cite to any provision of D.91-09-042 that Respondents purportedly violated. Respondents are correct. Further, no Commission decision or directive provided Respondents with a sufficiently clear reason or order to believe that they should include the amount of RTB stock redemption proceeds in the CHCF-A filings.[45]

Thus, on rehearing, we agree with Respondents. We will return the CHCF-A penalties previously paid, and will do so as credits against the Rule 1.1 penalties applied today. We will include interest at the 90-day commercial paper

[45] ILECs' Application for Rehearing of D.11-03-030 at 7.

rate published by the Federal Reserve[46] for the period those penalties were held until credited back to Respondents. To facilitate the calculation, we will use monthly and annualized 90-day commercial paper rates, as appropriate. [47]

4. Respondents Violated Their Duty Under Rule 1.1 By Failing to Disclose the RTB Proceeds in A.07-12-026

Throughout this proceeding, Respondents have contended that they adequately complied with the Commission's directives to disclose the RTB proceeds in the 2007 Application. Cal Advocates argue that Respondents violated that duty since several companies disclosed none of the dissolution proceeds and others only disclosed a small amount of the total RTB stock proceeds.[48] As explained below, we find the record is clear that Respondents had the duty to disclose the RTB proceeds in an application to be filed when any RTB stock redemption occurred, and were given adequate notice of this duty. The record is equally clear, for the reasons discussed below, that Respondents failed to disclose in the 2007 Application the full amount of the RTB proceeds as directed by the Commission.[49]

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[46] http://www.federalreserve.gov/releases/h15/data/Annual/H15_FCP_M3.txt.

[47] *See* D.10-06-029 at 39-40 where we used an annualized rate. In this case, we use monthly rates for the nine months in 2011, annual rates for 2012-2018, and monthly rates for the months in 2019.

[48] Cal Advocates' OB at 13.

[49] While not all Respondents had an order directing them to disclose RTB proceeds upon redemption in an application, all Respondents agreed to be bound by those same resolutions in their joint filing of A.07-12-026. (*See* 2007 Application at 5.) Thus, we find that all eight Respondents violated Commission orders by not disclosing the full amount of the RTB stock proceeds in the 2007 Application.

4.1. Respondents Had Adequate Notice That They Were Required to Notify the Commission When Any of the RTB Stock Was Redeemed

The parties disagreed as to whether Respondents had adequate notice that they were required to notify the Commission when the RTB stock was redeemed. The ILECs contend that the Commission did not give notice to the companies that the Application must include a full accounting of all RTB stock dissolution proceeds.[50] Cal Advocates disagree, claiming the 1997 Resolutions "gave clear direction to Respondents regarding when and in what manner they should report RTB redemption proceeds."[51]

In determining whether the utilities committed a Rule 1.1 violation in filing A.07-12-026, we first look at the Commission's orders in prior rate case decisions to determine if Respondents had a duty to disclose the full amount of RTB redemption proceeds to the Commission. In 1997, for example, the Commission approved Hornitos, Kerman, Ponderosa, Siskiyou, Volcano, and Winterhaven's rate case filings through resolutions.[52] For the reasons explained below, we agree with Cal Advocates that the language is plain,[53] and that Respondents were on notice to include all RTB stock redeemed in an application.[54] We reject Respondents' argument that "at no time did the

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[50] Respondents' OB at 25.

[51] Cal Advocates' RB at 4.

[52] *See* Resolution T-16005, April 3, 1997 (Ponderosa); Resolution T-16003, May 6, 1997 (Kerman), Resolution T-16006, April 23, 1997 (Siskiyou); Resolution T-16007 (Volcano); see also Resolution T-16969, January 26, 2006 (Siskiyou).

[53] Cal Advocates' OB at 17.

[54] We do not agree with Respondents (*see, e.g.*, Respondents' RB at 4) that Res. T-16968 (January 26, 2006) in any way negates or changes the obligation imposed by the 1997 directives to disclose the amount of the RTB stock redemption. To the contrary, it shows that as recently as January 2006, the Commission reaffirmed the language regarding the RTB stock redemption in the 1997 resolutions by stating "Siskiyou should file an application to consider the

Commission provide notice to the companies that they were required to disclose the proceeds received from the redemption of the patronage shares."[55]

The pertinent language is the same in all the Resolutions issued for the ILECs. For example, in Resolution T-16006, the Commission adopted the following recommendation by its staff:

> "*When any* Rural Telephone Bank stock is redeemed, STC [Siskiyou Telephone Company] should file an application with the Commission to request a determination of the appropriate ratemaking treatment for the gain on the redemption of the RTB stock."[56]

The language is clear. When stock is redeemed an event is triggered. "Any" does not require that all shares be redeemed. Rather, "any" means when one or more shares are redeemed. The redemption triggers an event. If there is more than one redemption then each redemption triggers an event. The event is the filing of an application for a Commission determination of the appropriate ratemaking treatment. Each triggering requires full and accurate disclosure of all the facts and data regarding that redemption to permit an informed, sound, and reasonable ratemaking determination. Cumulatively, the redemption of all shares requires disclosure of the full amounts of all transactions.

We are not persuaded by Respondents' counter argument with regard to the disclosure obligation that "any" does not mean "all" and thus, according to Respondents, the Commission did not direct that proceeds from "all" shares be included in the triggered application(s).[57] To determine the meaning of "any" as

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redemption of RTB stock as ordered in Resolution T-16006," Res.T-16968, Finding of Fact (FOF) 7 at 15.

[55] Respondents' OB at 28.

[56] *See* Res. T-16006 at 12, FOF 8, emphasis added.

[57] Respondents' RB at 5.

used by the Commission, we turn to Black's Law Dictionary. We note the definition of "any" in Black's Law Dictionary states that "any" has a diversity of meanings and can mean "all" or "every" as well as "some" or "one" and its meaning depends on the context.[58]

The context here is clear. The purpose of the ILECs' application that the Commission directed to be filed is to allow the Commission to make a determination of the appropriate ratemaking treatment of the gain on the redemption. We agree with Cal Advocates that the Commission "can only make such a ratemaking determination if it has all the facts, which necessarily includes all RTB proceeds received as a result of the dissolution of the RTB."[59] It would not be logical for the Commission to expect or direct disclosure of only "some" or "one" share(s) of RTB stock. Respondents fail to persuasively show why the Commission would need or want less than full disclosure of all proceeds from the redemptions.

Rather, the 1997 Resolutions demonstrate clear direction to disclose all RTB stock redemption proceeds so that the Commission would be able to make an equitable, just and reasonable ratemaking determination based on all the facts. Absent specific Commission direction to otherwise limit a submission, a utility must always disclose all information on an issue and, if unclear, should err on the side of disclosing more rather than less. The disclosure obligation was not simply whatever sub-amount of the total RTB stock redemption the ILECs unilaterally decided to disclose to match their requested relief.[60]

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[58] Black's Law Dictionary, 5th Ed., 1979, at 87. See also *Estate of Wyman*, 208 Cal.App. 489, 492 (1962) (citing cases where courts have interpreted "any" to mean "all").

[59] Cal Advocates' OB at 17.

[60] *See* Respondents' OB at 33.

In sum, the California Constitution, Public Utilities Code, and multiple court decisions require that the Commission do its job. That job includes reasonable balancing of all competing stakeholder interests when the Commission sets just and reasonable rates for safe and reliable service. The Commission cannot do its job if it does not have full and complete information. It is not up to a utility to determine what information the Commission does or does not need, and does or does not get. If there is any doubt, a utility must provide complete information. The 1997 Commission orders require that information relative to redemption proceeds be provided by application to the Commission. This can only mean all information and data regarding the redemption proceeds. No contrary reading is reasonable.

It is thus reasonable to interpret the phrase in the 1997 resolutions "when any stock is redeemed" as a directive to the Respondents to make a disclosure when a stock redemption occurred and to report *all* the redeemed RTB stock in that disclosure (the application). We thus reject Respondents' reading of the 1997 resolutions as without merit. We find that the 1997 resolutions adequately put Respondents on notice that once any RTB stock was redeemed, the ILECs should file an application with the Commission. The application must necessarily disclose the full amounts of the redemption so that the Commission could make an informed, sound, equitable, just and reasonable ratemaking determination.

As discussed more below, it is due to Respondents' collective and unilateral decision to disclose only the RTB stock held in ratebase and assume application of gain-on-sale rules adopted almost a decade after the 1997 resolutions issued that the 2007 Application was deficient.[61] Respondents' due

[61] Respondents admit on cross-examination that the 1997 Resolutions do not include the term "gain-on-sale." *See* Cal Advocates' OB at 18, fn. 83.

process rights have not been violated by a lack of notice of the duty to provide full disclosure of the RTB stock redemption proceeds.

4.2. Respondents Did Not Comply with the 1997 Directives to Disclose All the RTB Stock Redeemed

We have disposed of Respondents' argument that the 1997 directives do not adequately provide notice of the information the Commission wanted in the application. The next question is whether Respondents adequately complied with the Commission's directives.

On its face, the December 20, 2007 application does not specifically disclose all RTB stock redemption proceeds. In fact, three Respondents did not disclose any RTB stock redemptions, and five Respondents failed to disclose the full amounts of the RTB stock redemptions. We thus agree with Cal Advocates that Respondents violated Rule 1.1 when they failed to disclose over $25 million they received from the RTB.

Respondents raise several reasons why they did not violate the 1997 directives in the 2007 Application. Respondents' claim that they were engaging in reasonable advocacy protected by the First Amendment of the United States Constitution in arguing that only RTB stock in ratebase had to be disclosed to the Commission due to adoption of the gain-on-sale decision in 2006. We will address this claim first. We will then address other claims by Respondents, including whether there was adequate disclosure of RTB redemption proceeds, including patronage shares, via either the two footnotes in the Application or constructive notice in other documents filed with this Commission, or whether the undisclosed information was material. As discussed below, none of the reasons given by Respondents are persuasive.

4.2.1. Respondents Were Not Practicing Reasonable Advocacy When They Failed to Fully Disclose RTB Stock Redemption in the Application

Respondents' position suggests there is a tension between a regulated utility's duty to follow Commission directives including full disclosure of all required information and First Amendment rights to reasonable advocacy on behalf of their shareholders to save them money. There is no such tension.

It is well-established that corporations have First Amendment rights.[62] Those rights, however, must be understood within the context of the utility's statutory obligations. Those obligations include full disclosure to its regulator of required information. The First Amendment does not permit utilities to hide information required by the regulator under the guise of reasonable advocacy, even if the utility believes that the regulator should have no interest in the information. At a minimum, regulated utilities must provide all required information,[63] and may then make policy or legal arguments as why some or all of the disclosed information is irrelevant. That was not done in this case. Based on a preponderance of the evidence, we find that Respondents violated their duty to disclose required information to the Commission, by not disclosing the full amount of RTB stock redemption in their Application, and did so using unsound legal arguments.

We are not persuaded by Respondents' argument that they were within their rights to file only certain limited information because of their advocacy position that only RTB stock in ratebase would be subject to the Commission's ratemaking determination.[64] Respondents state they "did not make any false or

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[62] *See, e.g., PG&E v. Pub. Util. Com'n.* (1986) 475 U.S. 1, 9-18.

[63] *See* Cal Advocates' RB at 7-8.

[64] *See, e.g.*, Respondents' OB at 32-34, Respondents' RB at 10, RB at 20.

incorrect statement of fact that they had a duty to correct but rather asserted a reasonable position under the Commission's gain-on-sale rules, a position later vindicated by the Court of Appeal."[65] Respondents state their Application was designed to advocate their position regarding the ratemaking treatment of the RTB redemption proceeds, and "includes all information relevant to the companies' litigation position."[66]

This is not the standard applied to filings made by regulated utilities to this Commission. The Commission often requires more information than may be relevant or beneficial to the utility's litigation position. The information we require is that which is directed by law and Commission decisions. We reject Respondents' argument that its failure to disclose all RTB redeemed stock constitutes reasonable advocacy and is therefore permissible. To the contrary, we regard the advocacy used in framing the initial application as violating Respondents' obligations under the regulatory compact.[67] To the extent the Application purposefully failed to include information required by the 1997 directives as part of Respondents' litigation strategy, we find it not only violated our orders but was *per se* unreasonable advocacy.

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[65] Respondents' RB at 16.

[66] Respondents' OB at 32.

[67] A regulatory compact exists between the Commission and cost-of-service regulated entities subject to the Commission's jurisdiction such as the ILECs. The regulatory compact provides that the Commission allows each regulated utility that provides safe and reliable service a reasonable opportunity to earn a fair return in exchange for ratepayers paying equitable, just and reasonable rates set by the Commission. The Commission's determination of--and balance between competing interests regarding--what is safe and reliable service, a fair return, and equitable, just and reasonable rates, requires the disclosure of all information required by law and Commission orders, not just the information that aligns with one party's (such as a utility's) litigation position.

We agree with Cal Advocates that nothing in this OSC implicates Respondents' First Amendment rights:

> "Respondents are entitled to advocate for any position that they wish in an Application to the Commission. What they are not entitled to do, as regulated utilities, is to mislead the Commission by omitting pertinent information that they were specifically directed to provide under the guise of advocacy."[68]

Cal Advocates also correctly notes that any and all information held by Respondents is subject to the Commission's authority to review and audit at any time and thus cannot impinge on any constitutional rights.[69]

There is nothing in the 1997 Resolutions directing the Respondents to only disclose the amount redeemed of RTB stock held in ratebase. Yet, this argument forms the basis of the 2007 Application. Kerman's witness testified that Kerman considered the stock redemption a "non-event" for the ratemaking process because none of Kerman's stock was in ratebase.[70] The witness then testified that Kerman would not have included its share of the RTB stock redemption in the instant application since they would have applied the gain-on-sale rules from D.06-05-041 and filed this application pursuant to that decision.[71]

These arguments as to only being required to divulge RTB stock held in ratebase are not persuasive. They fail because they contradict the plain language of the 1997 Resolutions, which directed Kerman and the other Respondents to file an application so that the *Commission* could determine the appropriate ratemaking treatment of the gain on the redemption of RTB stock. We agree with

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[68] Cal Advocates' RB at 7.

[69] *Id.* at 7-8.

[70] Cal Advocates' OB at 28, Reporter's Transcript (RT) Vol. 7, 1381: 7-517.

[71] Cal Advocates' OB at 28, RT Vol. 7, 1381: 14-15.

Cal Advocates that "Respondents grossly misrepresent the plain language of the direction that they received from the Commission."[72] The language of the 1997 Resolutions in no way suggests that the companies were to "propose the appropriate ratemaking treatment" for the RTB redemption proceeds as contended by Respondents.[73] The Resolutions do not delegate the Commission's authority over its determination of appropriate ratemaking treatment to Respondents, nor could they. But, by assuming the Commission's role and unilaterally making the ratemaking determination for the Commission, Respondents foreclosed the Commission's ability to make a comprehensive ratemaking determination, which the Commission could only have done had it been given all relevant information.

4.2.1.1 Definition of Gain

The 1997 Resolutions use "gain on redemption," which Respondents argue invokes application of the "gain on sale" decision (D.06-05-041). We find that regardless of what definition of the word "gain" is used, the 1997 resolutions make it clear that when RTB stock is redeemed, Respondents were to file an application showing the RTB stock proceeds so that the *Commission* (not the Applicants) could make whatever ratemaking determination it deemed appropriate. Any unilateral decision by Respondents to characterize their obligation to disclose the RTB stock redemption proceeds solely in terms of the May 2006 gain-on-sale decision[74] must be rejected as a convenient and self-serving post-hoc rationalization. Such sophistry has no place in transactions between the Commission and its cost-of-service regulated entities.

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[72] Cal Advocate's RB at 4.

[73] Respondents' OB at 11.

[74] D.06-05-041.

While Respondents chose to rely on the May 2006 gain-on-sale decision to construct their own ratemaking determination of the RTB stock, this reliance was misplaced for the following reasons. As Cal Advocates notes, gain-on-sale principles existed in 1997 when the Resolutions issued,[75] and yet the Commission used the term "gain on the redemption of the RTB stock" rather than "gain-on-sale."[76] We agree with Cal Advocates that the Commission in 1997 was concerned with all RTB shares, not only those within ratebase.[77]

Further, the main redemption of RTB stock occurred in April 2006. Respondents could have complied with the 1997 directives by immediately filing the Application at the time of the April 2006 redemption. It was not until the end of May 2006 that the Commission issued its updated gain-on-sale decision.[78] If Respondents had wished, they could have notified the Commission in an April 2006 application that there would likely be a subsequent residual redemption. If Respondents had followed that path, all RTB stock redemption proceeds would have been disclosed as required, and Respondents would have been free to argue that only those RTB stocks that had been held in rate base should be subject to any ratemaking determination by the Commission. This would have been an appropriate course for Respondents to follow.

Instead of filing an Application in April 2006, when most but not all RTB stock was redeemed, Respondents chose to wait until late December 2007 when

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[75] Gain-on-sale principles existed since at least 1985. (*See* September 2, 2004 Order Instituting Rulemaking 04-09-003 at page 6.)

[76] Cal Advocates' OB at 18.

[77] Cal Advocates' OB at 19.

[78] Gain-on-sale was addressed in Commission decisions from at least 1985. See, for example, D.86-01-026, D.93-09-038, D.94-06-011, D.97-06-086. For a more complete description see pages 5 to 8 and 20-31 of September 2, 2004 Order Instituting Rulemaking 04-09-003.

the residual RTB stock had been redeemed to file the Application. They then disclosed only those limited amounts held in ratebase. This was improper since Respondents could not have known in December 2007 how the Commission would apply the newly adopted D.06-05-041 gain-on-sale rules for at least two reasons.

First, D.06-05-041 provides an exception for sales of assets that constituted extraordinary circumstances.[79] Respondents themselves emphasize the extraordinary nature of the RTB stock redemption by characterizing it as a "one-time regulatory event that is unlikely to be repeated."[80] Thus, there was no certainty that the treatment used by Respondents based on their interpretation of D.06-05-041 would be applied by the Commission.

Second, Respondents characterize the patronage shares as a refund or return of interest,[81] which they assert should not have triggered application of the gain-on-sale rules. According to Respondents, it is not clear that redemption of patronage shares by the RTB was in fact a "sale" of the asset, since no market value was placed on the shares and there was no "buyer" or "seller" involved.[82] Whether or not a sale, however, the patronage shares were redeemed. The redemption triggered the duty to file an application. An applicant is required to include all relevant information within an application, not simply information that aligns with and supports the applicant's litigation position. Full and complete information is mandatory so that the Commission can reach an informed, sound, just and reasonable decision.

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[79] D.06-05-041 at 2. *See also,* Respondents' RB at 6.

[80] Respondents' RB at 20.

[81] Respondents' RB at 5.

[82] *Id*.

Respondents now insist on the binding nature of D.10-06-029's application of the gain-on-sale rules.[83] However, when A.07-12-026 was filed in December 2007, it was by no means certain that the Commission in 2010 would find that the gain-on-sale rules applied to a one-time event, let alone agree with how Respondents applied the gain-on-sale rules in their initial application.[84] In fact, as discussed in more detail below, Respondents initially state in A.07-12-026 that the gain-on-sale rules should *not* apply (emphasis added),[85] before applying them. Therefore, we find the Respondents, as regulated entities,[86] had a clear and unequivocal duty to disclose all RTB proceeds in their Application and not just the small portion that was held by various of the Respondents in rate base for several years.

A reasonable advocacy approach for Respondents would have been to fully disclose the full amount of the RTB stock redemption proceeds to the Commission and then assert their argument that under the gain-on-sale rules

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[83] Respondents' OB at 2, fn. 10.

[84] In footnote 10 of their OB at 2, Respondents state the Commission is bound by its 2010 determination applying the gain-on-sale rules, given the Court's decision in *Ponderosa Telephone Company*, 197 Cal. App. 4th 48. To the extent Respondents are arguing that the Court's decision precludes the Commission from applying the gain-on-sale rules differently, we do not need to reach that issue in order to determine whether the initial pleading in A.07-12-026 violated Rule 1.1, since we only need look at what was known to Respondents in December 2007. We also note that it is settled that the Commission is not bound by its prior decisions, unlike a court. *In re Pacific Gas and Electric Company* (1988) 30 C.P.U.C.2d 189, 223-35; *see also Postal Telegraph Cable Company v. Railroad Commission* (1925)197 Cal 416, 436; Section 1708.

[85] A.07-12-026 at 7-8.

[86] Respondents argue that Cal Advocates takes an aggressive advocacy position and that therefore the ILECs should be able "to present those facts that were relevant to and consistent with" its position. Respondents' RB at 11. We disagree. Without characterizing Cal Advocates' advocacy position, Respondents' Application was more than aggressive. It violated its obligation to respond adequately to the Commission's directives, which as a regulated utility violates both statute and Commission decisions. (*See,* for example, Section 581, which requires utilities filing reports to provide full and correct disclosures to questions from the Commission.)

only $3,067 should go to ratepayers. Thus, Respondents could have complied with the 1997 directives and, at the same time, preserved their First Amendment rights to advocate their position. To do anything less, given what was reasonably known to Respondents in December 2007 is not reasonable advocacy, but an artifice designed to mislead the Commission.[87]

Advocacy that misleads the Commission or its staff, either by deliberate effort or by false information including omission of material information, is unreasonable and violates Rule 1.1. Both occurred in the 2007 application. It took Commission staff almost two years after December 2007 to elicit information from Respondents concerning the full amount of the RTB stock redemption. It was not until after the Commission issued its proposed decision in A.07-12-026 that Respondents filed a full disclosure of the RTB proceeds on November 19, 2009.[88]

4.2.1.2. Duration of Violation

We consider but decline to impose penalties for choices Respondents made in responding to the three intervening staff inquiries. Respondents are correct that "none of the questions asked for a full accounting of the value of all redemption proceeds."[89] However, Respondents' responses to Commission staff's data requests[90] were unnecessarily narrow.[91] We do not find the Respondents violated Rule 1.1 in responding to staff's data requests. However,

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[87] An artifice is defined as "trick or fraud" implying "craftiness or deceit." (D.11-03-030 at 21, citing Black's Law Dictionary.)

[88] *See* Response of Respondents to ALJ's Ruling Granting Motion to Reopen the Record and Directing Further Filing, November 19, 2009, Attachment A.

[89] Respondents' OB at 13.

[90] *See*, Cal Advocates' OB at 5-6.

[91] *See*, *e.g.*, D.01-08-019 (where responses to staff data requests were overly narrow).

by not fully disclosing the RTB stock proceeds in response to staff's data requests when given three opportunities to do so, the Rule 1.1 violation that began with the filing of the December 20, 2007 Application continued until November 19, 2009, when full disclosure was made. If Respondents had revealed the full amount of the RTB stock redemption at any of the three points in time following December 2007 (when staff asked for information), the continuous nature of the violation would have ended at that point.

Moreover, had the Application originally contained the full amount of RTB stock redemption, none of the follow-up questions from the Commission staff would have been necessary and there would be no basis for a Rule 1.1 violation. Waste of valuable staff and Commission time could easily have been prevented had Respondents complied with the 1997 directives to disclose the RTB stock redemption proceeds. Respondents' reliance on reasonable advocacy as an excuse for limiting disclosure is misplaced in the regulatory context considering Respondents are cost-of-service regulated entities subject to Commission jurisdiction and must provide whatever information is required, not just that necessary for the utility's litigation position. As a matter of law, Respondents are wrong in stating it "would violate the First Amendment and chill future reasonable advocacy to penalize the companies for structuring their disclosures in the Application to match their requested relief."[92] To the contrary, sanctions are appropriate where utilities fail to disclose the information requested by the Commission.[93]

[92] Respondents' OB at 33.

[93] *See* Cal Advocates' RB at 8.

Thus, we disagree with Respondents' claim that Cal Advocates is attempting to transform Rule 1.1 into a guessing game and tool for retroactively punishing companies who fail to divine the Commission's unspoken intent.[94] To the contrary, the 1997 Resolutions contained specific, clear directives. Certainly, the question of whether RTB proceeds were in rate base or not was not a factor considered by the Commission in issuing the Resolutions in 1997.

If the Respondents had any doubts as to how to structure their application, they could and should have consulted Commission staff. This is especially true as Respondents are regulated entities with extensive regulatory experience. If they had disagreed with the staff's guidance, one reasonable course would then have been to seek additional Commission guidance by, for example, clearly and specifically highlighting the question in the Application.[95] This would have surfaced the issue and permitted timely Commission direction for Applicants to supplement the application. Rather, Respondents chose to bury mention of unspecified amounts of patronage shares in footnotes. As discussed further below, we now understand this as a thinly disguised attempt to cover themselves in case Respondents' artifice to mislead the Commission was uncovered. Most importantly, however, the proper course of action--whether or not in the face of a disagreement with staff's advice--would have been to provide full and complete information in the 2007 Application and then make their policy or legal arguments that some information was irrelevant.

[94] Respondents' RB at 3.

[95] *See* Cal Advocates' OB at 19, fn. 88.

4.2.2. Respondents Did Not Give Adequate Notice of the RTB Stock Redemption in Their Application, Either in the Two Footnotes or by Constructive Notice

Respondents claim that the 2007 Application presents Respondents' position regarding the appropriate amounts to be shared with ratepayers, while at the same time acknowledging the existence of other amounts that are not relevant to the companies' proposal.[96] Constructive notice was provided, Respondents argue, because:

> "given that the Commission had knowledge of the anticipated redemption of RTB funds in 2006, the Commission knew – or should have known – that the significant increase in non-operating income [in the 2006 annual reports over the 2005 annual reports] resulted from the redemption" of the ILECs' RTB stock.[97]

Respondents also argue the Commission had actual notice of the amount of RTB stock redemption.[98] We disagree.

Respondents argue that actual notice and adequate disclosure was made by mentioning the patronage shares in two footnotes within the 2007 Application. This is not a credible contention. The reference to the patronage shares in two footnotes in the application was not the full and complete disclosure that the 1997 Resolutions contemplated.

Footnote 21 of A.07-12-026 states:

> In addition to purchased shares, during the course of their loans the Applicants received what has been characterized as "patronage" shares. Patronage shares were issued to holders of a particular class of RTB stock. Upon redemption, patronage shares were paid according to par value. However,

[96] Respondents' OB at 3.

[97] Respondents' OB at 48.

[98] Respondents' RB at 8.

> patronage shares were never included in rate base by any company and are not subject to gain-on-sale requirements.

Footnote 21 does not specify the value of the redeemed patronage shares, even though these shares were by far the largest component of the RTB stock redemption for each of the eight Respondent ILECs and constituted over $25,000,000 out of the entire RTB stock redemption of over $31,000,000. Footnote 1 simply states that RTB borrowers acquired additional shares of Class B stock through patronage refunds, without specifying dollar amounts. There is no indication in either footnote of the value of the patronage shares. We find this to be inadequate disclosure of the value of the full amount of RTB stock redemption.

Nor was Respondents' duty of disclosure met via constructive notice by various separate reports submitted to the Commission. We agree with Cal Advocates that the Commission has no obligation to search through multiple unrelated filings for the information it mandated that Respondents report directly via an application.[99] We further agree with Cal Advocates that even if the Commission could have done so, the Commission lacked sufficient information to determine the total RTB stock proceeds for each company.[100] We lacked sufficient information because the multiple unrelated filings failed to contain the necessary information in a way that could be reasonably identified without undue burden on staff and the Commission, and without the likelihood of introducing errors for at least some, if not all, Respondents. As ordered by the Commission in 1997, Respondents had the duty to clearly, fully and completely disclose redemption proceeds in the initial application. Respondents did not do

[99] Cal Advocates' RB at 6.

[100] Cal Advocates' RB at 7.

so and cannot now reasonably claim they gave either constructive or actual notice. They did not.

4.2.3. Respondents' Omission Was Material

Respondents argue that even if they did fail to disclose the full amount of RTB stock redemption, it is immaterial.[101] We disagree.

We require regulated utilities to provide full, complete, and correct information. In particular, we have said that "an omission to provide correct information can constitute a Rule 1 violation if the consequence is to mislead the Commission about a matter which is material to a proceeding."[102] Moreover, it is up to the Commission to determine the value of the information obtained, not the regulated entity.[103]

The Commission has also found that the timing and manner in which information is disclosed could have a material effect on the outcome desired by the disclosing party.[104] It is material here that Respondents failed to provide the required information for nearly two years while unreasonably claiming it was revealed in two brief footnotes (thereby attempting to unreasonably shift the burden of uncovering the data to the Commission).

Respondents appear to argue that full disclosure of the RTB stock was immaterial given the Commission's decision in 2010 applying the gain-on-sale rules and the *Ponderosa* Court's decision affirming application of those rules.[105]

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[101] Respondents' OB at 29.

[102] D.96-09-083, 68 CPUC2nd 165, 168. Rule 1.1 is the current version of what previously was known as Rule 1.

[103] *Id*.

[104] D.01-08-019 at 8-9.

[105] The Court applied the gain-on-sale rules even though it reversed the Commission's decision. That is, the Commission applied the gain-on-sale rules but determined that (a) two factors governing the sharing formula were not present with this unusual asset, and (b) that those who

According to Respondents, the materiality of the Class B patronage shares thus depends on the Commission's application of the 2006 gain-on-sale rules in 2010.[106] However, that determination did not occur until several years after the Respondents' initial application, so it was not possible for the Respondents to make that prediction when the initial application was filed in December 2007. This highlights the fallacy in Respondents' argument because it is only with the benefit of hindsight and the subsequent Court decision that Respondents can argue their omission of the entire amount of RTB stock should be deemed immaterial. For purposes of determining whether there was a Rule 1.1 violation, the Commission must consider what Respondents knew in 2007.

We find the timing, manner and extent to which Respondents initially disclosed the RTB stock proceeds were material factors for several reasons. By failing to follow the directive of the 1997 Resolutions, the initial application sought to foreclose the Commission's options to determine for itself what ratemaking treatment to apply to the stock. It also denied other potential parties notice by hiding the full magnitude of the redeemed RTB stock.

Had Respondents included the full amount of the RTB stock proceeds in the Application as required, other possible outcomes could have occurred. We

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paid for the asset and took the risk (i.e., ratepayers) should get the benefit of the gain. (D.10-06-029 at 22-24.) The Commission also determined that applicants failed to demonstrate they had met the Commission's underlying assumption (i.e., the property was funded entirely by shareholders). (D.10-06-029 at 35.) As a result, the Commission ordered that all $31 million in RTB redemption proceeds be distributed to ratepayers. The Court applied the gain-on-sale framework but determined that the ILEC owned the Purchased Class B shares. The Court also determined that the Patronage Class B shares related to utility costs paid in the past pursuant to Commission-approved rates. The Court said allocating that gain to ratepayers would retroactively adjust previously approved rates (violating the retroactive ratemaking doctrine). The Court annulled the Commission's decision.

[106] *See* Respondents' OB at 2.

consider some alternate outcomes, not to speculate, but to show Respondents' failure to include full information in 2007 was material and affected the Commission's ability to make the just and reasonable ratemaking determination anticipated by the 1997 Resolutions.

For instance, the Commission may have decided that the May 2006 gain-on-sale rules did not apply at all[107] since the stock redemption was an extraordinary "one time" event.[108] Alternatively, the Commission might have decided that the gain-on-sale rules do not apply to distributions of the patronage shares, which, according to Respondents, were not returns on investments or a "gain," but constitute return or refund of interest paid.[109] In either case the Commission might have reached an outcome different than it did.

Or, as Cal Advocates suggest,[110] the Commission's determination of Respondents' CHCF-A fund draws could have been affected. We note here that Respondents are cost-of-service regulated companies and receive substantial subsidies from all telephone customers throughout the state from the CHCF-A Fund. CHCF-A draws are affected by many factors, including treatment of assets and ratebase.[111] One ILEC witness admitted that the RTB redemption proceeds

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[107] Respondents agree with this characterization, stating that "the proceeding involves a one-time regulatory event that is unlikely to be repeated." Respondents' RB at 20.

[108] D.06-05-041 at 2 ("The rule also does not apply to utility sales of assets of extraordinary character…").

[109] Respondents' RB at 5.

[110] Cal Advocates' RB at 11.

[111] CHCF-A support is determined annually based on a "means" test. The means test compares revenue received versus revenue needed for the ILEC to earn its authorized rate of return. Revenues and rates of return are affected by many factors, including treatment of assets and ratebase.

were used to invest in plant construction.[112] If the Commission had learned that RTB redemption proceeds were used to purchase assets, the Commission could have considered whether to treat these asset purchases in a similar manner as it does contributions in aid of construction for water utilities.[113] If treated this way, these assets would have been permanently excluded from ratebase. Such treatment would have resulted in CHCF-A draws in amounts that could have been substantially different than those actually authorized. Further, by omitting key information, Respondents denied the Commission the opportunity to consider whether assets purchased with RTB redemption proceeds should be excluded from ratebase, thereby potentially reducing both revenue requirement and CHCF-A draws.[114]

As noted by Cal Advocates, had the Respondents received refunds in the form of cash, the Commission would have considered that cash when determining the Respondents' expenses for rate cases, in turn affecting either Commission-adopted rates in Respondents' general rate cases or their CHCF-A draws. However, since patronage refunds were received by the Respondents as shares, the Commission decided in the 1997 Resolutions that it would determine the ratemaking treatment of these funds upon redemption.[115]

These are some of the potentially different outcomes that are within the realm of possible Commission ratemaking determinations, had the Respondents made the required full disclosure to the Commission. In addition, other potential intervenors might have advocated for additional ratemaking determinations

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[112] Cal Advocates' RB at 12.

[113] *Id.* Contributions in aid of construction for water utilities are excluded from ratebase.

[114] *Id.*

[115] *Id.* at 13.

before the Commission, had they received adequate notice of the full amount of the RTB stock redemption. Yet, due to Respondents' collective and unilateral decision to intentionally exclude this information in their original application pursuant to their theory of reasonable advocacy, such alternative potential outcomes will never be known.

For the above reasons, Respondents cannot now claim that the full amount of the RTB stock dissolution proceeds is immaterial, based on the subsequent Court decision.[116] We recognize it is not possible to determine what specific effect the failure to disclose fully the amount of the stock redemption had on the Commission's ratemaking determination in this case. Yet, Respondents' deliberate efforts to hide the full amounts from the Commission should not allow them to benefit by arguing that there was no Rule 1.1 violation since the undisclosed amounts, according to Respondents, are immaterial in light of a considerably later court decision.[117]

This rehearing is not relitigating D.10-06-010 (which returned $31 million to ratepayers). Rather, it is the rehearing of D.11-03-020 (the original Rule 1.1 penalty decision that levied fines of $355,000). The *Ponderosa* Court's determination has no bearing on what the Commission directed the Respondents to do in the 1997 Resolutions. Further, while the Court annulled the remedy the Commission adopted in D.10-06-029, the Court did not rule on whether Respondents misled the Commission. Nor was the issue of the Rule 1.1 violation raised on appeal. Thus, the *Ponderosa* Court decision does not preclude our Rule 1.1 inquiry.

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[116] Respondents' OB at 30.

[117] Respondents themselves note however that the patronage shares were not an investment and were never in ratebase. Respondents' RB at 5.

Utilities arguing for full recovery of prudently incurred expenses often rely on the concept of the regulatory compact.[118] However, the regulatory compact imposes duties as well as benefits on regulated utilities. Chief among these duties is that regulated utilities must respond adequately to Commission directives (so that Commission-adopted rates are equitable, just and reasonable) or face penalties. In this case, Respondents were directed to disclose the RTB stock dissolution proceeds. The failure to make a full disclosure was a material omission. It strikes at the heart of the regulation of cost-of-service utilities by this Commission, where "hide the ball" or "cat and mouse" games must have no part.

4.3. Respondents Intentionally Violated Rule 1.1

While intent to mislead is not required to find a Rule 1.1 violation,[119] we find it present here. Also, intent is a key factor in determining the severity of the offense and conduct of the utilities, which we will discuss below regarding sanctions. We find based on the record evidence in this proceeding that Respondents intentionally violated Rule 1.1 in filing the 2007 Application.

First, we note that, as discussed previously, Respondents failed to disclose all RTB stock dissolution proceeds in the 2007 Application as directed. The failure to follow the directives in Commission decisions by means of an artifice to mislead the Commission through false or incomplete information constitutes a violation of Rule 1.1.[120] Here, as explained below, we find not only an artifice to

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[118] *See, e.g.*, D.05-10-042 at 9 ("[P]roviding an opportunity for a reasonable return on investment was at the core of the regulatory compact."); D.09-03-025 at 324 ("The "regulatory compact," is that in exchange for a reasonable opportunity of earning a fair return, ratepayers pay the adopted rates and the utility does what is necessary to provide safe and reliable service.")

[119] *See, e.g.,* D.92-07-078, D.92-07-084, D.93-05-020, D.01-08-019, and D.13-12-053.

[120] D.01-08-019 at 2.

mislead but that the information that was provided was rendered false through omission of full disclosure.

The disclosure of the existence of patronage shares in the two footnotes in A.07-12-026 fell far short of the required disclosure. In structuring the 2007 Application as they did, Respondents made a collective and unilateral decision that the gain-on-sale rules applied only to the extent and in the way that Respondents' wished, and thus there was no need to inform the Commission of all redeemed RTB stock proceeds. This litigation strategy was not reasonable since it directly contradicts the Commission's directions in the 1997 Resolutions. Further, nowhere did the Commission direct Respondents to inform the Commission solely about redemption of shares held in rate base. Respondents admit that their purpose was to shelter as much of the RTB stock dissolution proceeds as possible from Commission review,[121] but the 1997 directives do not justify Respondents' approach. Thus, Respondents intentionally misled the Commission in violation of Rule 1.1.

4.4. Respondents Used an Artifice to Mislead the Commission in Structuring the 2007 Application

Respondents argue in the 2007 Application that it is inconsistent for the Commission to deny the ILECs inclusion of RTB stock in rate base on the one hand, and on the other hand to require a gain-on-sale analysis for the same asset. For that reason, the 2007 Application continues, "[t]he possibility that the 1997 GRC resolutions addressing RTB stock were concerned about the gain-on-sale implications must be dismissed."[122] The Application thus expressly dismiss the idea that the 1997 Resolutions solicited application of the gain-on-sale rules. The

[121] *See* Respondents' OB at 32.

[122] A.07-12-026 at 7.

Application then changes course, as if reluctantly conceding gain-on-sale rules do apply to them, when in fact the application of the rules are advantageous to the Respondents. "Regardless the Applicants provide analysis under principles of gain on sale."[123]

In structuring the Application in this manner, we find that Respondents used an artifice to mislead the Commission. If the Commission agreed to blindly apply the gain-on-sale rules, it would forego the independent ratemaking determination by the Commission called for by the 1997 Resolutions. This would actually be beneficial to Respondents. Thus, despite the Application's claim that the gain-on-sale rules should not apply,[124] the Application nonetheless applied them, albeit in a reluctant manner. By applying the gain-on-sale rules adopted in May 2006, Applicants revealed only a small portion of the full RTB stock redemption in the Application, in contradiction to the 1997 Resolutions. This is the artifice.

Making the RTB stock redemption appear small ($3,037 total gain for ratepayers) appears to be a critical part of Respondents' reasonable advocacy strategy. If this strategy succeeded, it would be very advantageous for Respondents. If successful in persuading the Commission to limit any gain to the RTB stock held in rate base, a very small percentage of the total RTB stock dissolution proceeds, the Respondents would succeed in sheltering the lion's share of the RTB stock proceeds from Commission review. At the same time, Respondents attempted to cover themselves in case of future questioning by including vague footnotes as to the existence of unspecified patronage shares,

[123] *Id.* at 8.

[124] *Id.*

which in fact constituted the bulk of the RTB stock redemption. Again, it is noteworthy that Respondents admit that the patronage shares themselves were not an investment and were never in ratebase.[125]

We find this artifice, the deliberate omission of the bulk of the RTB stock proceeds via the application of the 2006 gain-on-sale rules, to be egregious and far beyond the bounds of what could be considered reasonable advocacy by practitioners before this Commission. This deceptive artifice, and the accompanying intentional failure to include all stock proceeds from the dissolved RTB in the 2007 Application as directed in the 1997 Resolutions, violated the Commission's orders. This deliberate effort argues for a severe penalty since Respondents' actions strike at the heart of the regulatory relationship between these utilities and this Commission.

We note here that Respondents themselves refer to an "omission" in the Application, stating that:

> The omission had no bearing on the ultimate dispositions of the case because the Commission ultimately requested and received the information, used the information to adopt its desired outcome, and then was told unequivocally by the Court of Appeal that the information was irrelevant.[126]

Again, we will not speculate whether the result in this case would have been different had the Commission and others had the full picture of the RTB stock proceeds in a timely manner upon dissolution of the bank. However, Respondents are incorrect in stating that the Commission used the information to adopt its desired outcome, when it is not possible to know what the outcome of this proceeding would have been had Respondents included the omitted

[125] Respondents' RB at 5.

[126] Respondents' OB at 60, fn. 276.

information. We find it reasonable that the Commission would have at least considered alternative ratemaking determinations, had it been aware of the full value of the proceeds from the RTB stock dissolution. We thus find the 2007 failure to provide full disclosure of the RTB stock proceeds in the Application was an intentional artifice to mislead the Commission.

4.5. Respondents' Failure to Provide Adequate Notice of Total RTB Stock Redemption Proceeds In A.07-12-026 Denied Due Process to Potential Intervenors

Due to the failure to disclose over $25 million in redeemed RTB stock in A.07-12-026, potential parties to the proceeding did not receive adequate notice of the full amount of the RTB stock redemption. Respondents stated in the Application that a little over one million dollars in RTB stock held in ratebase was redeemed with only $3,037 payable under the gain-on-sale rules to ratepayers. In so doing, Respondents not only presupposed application of the 2006 gain-on-sale rules, effectively foreclosing the Commission from making its ratemaking determination, but also denied notice of the full amount of the RTB stock redemption to potential interested parties such as consumer advocates, possible competitors, and the Commission's own advisory staff. Respondents' intentional action thus subverted the Commission's application process, denying due process rights to potential intervenors.

4.6. False Information under Rule 1.1 Includes Omitted Information

In addition to intentionally misleading the Commission by means of the above-described artifice, examination of the 2007 Application reveals that Respondents did not fully disclose the RTB stock redemption. This is a separate violation of Rule 1.1, since false information has been found to include

incomplete information.[127] As discussed above, we find the footnotes contained in the 2007 Application to be an inadequate substitute for the full accounting directed by the Commission.

5. Sanctions for the Rule 1.1 Violation

Utilities have a duty to comply with Commission rules. The burden is on the utility to determine its legal obligations and fulfill them.[128] Actions and omissions that mislead the Commission, and continue for a period of time to mislead the Commission, should result in significant penalties.[129] The Commission is committed to achieving full compliance with our governing laws and rules. "Anything less damages the agency's regulatory mission and undermines the public's confidence in due process, fair hearings, and just and reasonable rates."[130] In devising appropriate remedies here we first consider the recommendations of Cal Advocates and Respondents. We then address our adopted sanctions.

5.1. Cal Advocates' Recommendations as to Fines

Cal Advocates recommends, based on the totality of the circumstances, fines ranging from $113,959 for Kerman to $5,563,428 for Siskiyou, with a total for the eight Respondents of $20,999,037.[131] In fashioning its recommended penalties, Cal Advocates first applies initial fine amounts of $20,000 per offense. Cal Advocates recommends the penalty be reduced by $5,000 for Calaveras,

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[127] In Re Competition for Local Exchange Service, D.01-08-019 at 8-10.

[128] D.15-12-016 at 50.

[129] *Id.* at 80-81

[130] *Id.* at 82-82.

[131] Cal Advocates' OB at 39-40.

Cal-Ore, Ducor, Ponderosa, and Siskiyou in light of disclosure of some RTB proceeds.[132] Cal Advocates then argues there is a continuous violation under Section 2108 and multiplies the daily fine ($20,000 or $15,000) times 688 days to reach fines totaling nearly $100 million.[133] Since this greatly exceeds the $31 million total amount of RTB proceeds received by Respondents, Cal Advocates then states that it is reasonable to set the penalty amounts based on amounts Respondents received from the RTB less the interstate/intrastate allocation factor, for a total of about $20 million in fines for the eight Respondents.[134]

We disagree with Cal Advocates' recommended penalties. We are not convinced that the penalty amounts should be based on the amount of RTB stock proceeds received by each Respondent less the interstate/intrastate allocation factor. Penalty amounts fashioned in this way do not align well with the sanctions provided in the Public Utilities Code ($500 to $20,000 per offense during the relevant time period, recognizing the duration of the offense). Nor do we believe the five-factor test applied below supports fines of the magnitude proposed by Cal Advocates, in light of the relatively small size of these companies.

5.2. Respondents' Recommended Fines

In contrast, Respondents argue that if the Commission reaches the conclusion that they violated Commission rules, the facts of this case do not support a large penalty, and only a small, administrative fine could be imposed

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[132] *Id.* at 38-39. These recommended amounts match the sanction in D.11-03-030 ($20,000, with reductions of $5,000 for Calaveras, Cal-Ore, Ducor, Ponderosa, and Siskiyou in light of disclosure of some RTB proceeds.

[133] Cal. Advocates' OB at 39.

[134] *Id.*

even if the facts were as the OSC contends.[135] Respondents do not propose specific fines for the eight utilities, but propose that the low end of Section 2107 be used ($500 per offense).

We strongly disagree that a small administrative fine is appropriate in this case for the eight Respondents. Rather, Respondents' actions were intentional, without remorse, continuous, and harmed the regulatory process by misleading the Commission and its staff. In light of the entire record in this case, we will apply Section 2108 as well as Section 2107 in fashioning appropriate penalties.

5.3. Adopted Sanctions

We find the appropriate penalties for the ILECs' violations of Rule 1.1 to be those shown in the chart below.

PENALTIES FOR RULE 1.1 VIOLATIONS

Line No	ILEC (a)	Penalty (b)	Credits or Offsets				Net Penalty (g)
			25% (c)	CHCF-A (d)	Interest (e)	Rule 1.1 (f)	
1	Calaveras	$344,000	$86,000	$20,000	$1,206	$15,000	$221,794
2	Cal-Ore	$344,000	$86,000	$20,000	$1,206	$15,000	$221,794
3	Ducor	$344,000	$86,000	$20,000	$1,206	$15,000	$221,794
4	Kerman	$344,000	$0	$20,000	$1,206	$20,000	$302,794
5	Ponderosa	$344,000	$86,000	$20,000	$1,206	$15,000	$221,794
6	Sierra	$344,000	$0	$20,000	$1,206	$20,000	$302,794
7	Siskiyou	$344,000	$86,000	$20,000	$1,206	$15,000	$221,794
8	Volcano	$344,000	$0	$20,000	$1,206	$20,000	$302,794
9	TOTAL	$2,752,000	$430,000	$160,000	$9,648	$135,000	$2,017,352

Notes: (see associated table columns beginning with column b):
b. Penalty: $500 per violation for 688 days.
c. 25% Credit: Mitigation for partial disclosure
d. CHCF-A Offset: Credit for penalty already paid (D.11-03-030)
e. Interest Offset: Credit for interest on CHCF-A penalty already paid
f. Rule 1.1 Offset: Credit for Rule 1.1 penalties previously paid (D.11-03-030)
g. Net Penalty: Column b less columns c, d, e, and f.

[135] Respondents' OB at 60.

5.3.1. Sanctions Before Credits

In devising appropriate remedies in this proceeding, we take many factors into account. For example, while Respondents are relatively small by many measures (*e.g.*, annual net revenues, number of customers, employees), they all received proportionately significant sums of money as part of the $31 million in RTB redemption proceeds, most of which they failed to disclose to the Commission for nearly two years.[136] In particular, four Respondents received patronage share redemptions of between $2 and $6 million, with the eight Respondents receiving a total of $21.7 million.[137] Even the smallest utility measured by annual net revenue (Cal-Ore at $91,000) obtained a significant amount from the patronage share redemption ($1,199,927), providing even the smallest utility access to substantial financial resources.

We also consider the continuing nature of the offenses. We did not do so in D.11-03-030 because we there applied the maximum fine per offense (reduced for some utilities for partial disclosure). The result was sufficiently large penalties totaling $355,000 that were just, reasonable, and within our discretion to apply, given the totality of the circumstances at the time. On rehearing, we find it appropriate to apply both Sections 2107 and 2108, with penalties here totaling $2,752,000 (before limited offsets). Our decision to apply Section 2108 as well as Section 2107 in this rehearing is directly tied to the testimony and briefs introduced in this OSC phase, where Respondents' theory of reasonable advocacy is given as the reason for noncompliance with the Commission's directions.

[136] Cal Advocates' RB at 12.

[137] Cal. Advocates' OB at 21.

Respondents thereby not only wasted valuable Commission time and resources by initially failing to reveal the full amount of the RTB redemption proceeds for nearly two years (until November 19, 2009), but then compounded and aggravated their behavior by wasting valuable and limited staff and Commission time and resources for several more years, including more than two weeks of evidentiary hearing in 2018. As fully discussed elsewhere in this decision, we unequivocally reject the 'reasonable advocacy' defense as an unsound legal argument (not unlike our rejection in D.16-01-014 of the legal arguments of Raiser-CA as unsound). Respondents' actions were intentional and without remorse. We consider the continuing nature of the offenses in our applying penalties here that recognize the severity of the offenses. The result is a penalty for each Respondent, and total penalties, that are just and reasonable in light of the continuous and severe harm caused by Respondents' actions.

We find that the violations continued for 688 days. This is from the date the Application appeared in the Commission's daily calendar (January 2, 2008) to the date Respondents filed with the Commission the full disclosure of the RTB stock dissolution proceeds (November 19, 2009).[138]

We adopt a sanction of $500 per offense. While this is the low end of what is authorized in Section 2107, this is in no way a minimum penalty. Because we also find a continuous violation for 688 days, the total fines are significant given the small relative size of Respondents. Multiplying $500 per day times 688 equals $344,000, before offsets. This makes our base fine for each of the eight Respondents substantial and appropriate considering the nature of the violation. We find our penalties imposed today significant enough to deter Respondents

[138] Respondents' Response to ALJ's Ruling Granting Motion to Reopen the Record and Directing Further Filing, November 19, 2009, Attachment A.

from failing to disclose required information in the future without being excessive.

We note here that the Commission has a great deal of discretion in fashioning penalties. The California Constitution, along with Public Utilities Code Section 701, confers broad authority on the Commission to regulate public utilities, in particular imposing remedies in addition to those specifically set forth in the Public Utilities Code.[139]

5.3.2. Credits or Offsets

Five companies (Calaveras, Cal-Ore, Ducor, Ponderosa, and Siskiyou) reported the value of Class B purchased shares that had been included in rate base. The amount in rate base totaled $1,370,250, prompting these five companies to propose returning a total of $3,037 to ratepayers.[140] Kerman, Volcano, and Sierra did not report any RTB proceeds. Cal Advocates urges the Commission to consider this as a mitigating factor for the five companies, in recognition of the totality of the circumstances.[141] We find this is an appropriate exercise of our discretion and will reduce the fines for the five companies by 25% as shown in the chart.[142]

Since on rehearing we reverse the CHCF-A fines imposed in D.11-03-030, we find it appropriate to credit amounts previously paid by Respondents. We include interest at the 90-day commercial paper rate in this credit.

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[139] *See*, *Southern California Edison Co. v. Peevey*, (2003) 31 Cal. 4th 781, 792, citing *Assembly v. Public Utilities Commission* (1995) 12 Cal. 4th 87, 103.

[140] Cal Advocates' OB at 4, citing Application at Attachment 1.

[141] Cal Advocates' OB at 37.

[142] We similarly offset the Rule 1.1 penalty in D.11-03-030 by 25% for the five Respondents who disclosed a portion of their RTB stock redemption proceeds. (D.11-03-030 at 22; $20,000 penalty for each utility reduced to $15,000 for five who made partial disclosure.)

Finally, we offset today's penalties by the amounts Respondents have already paid for Rule 1.1 violations. That is, D.11-03-030 fined five Respondents $15,000 and three Respondents $20,000. Those fines have been paid. Today's fines are not cumulative of those already paid and we, therefore, offset today's fines by those amounts.

5.4. Factors Used to Determine Sanctions

The Commission considers two general factors in setting fines: (1) the severity of the offense and (2) the conduct of the utility.[143] In doing this we set out five specific factors to examine in determining whether the fine is reasonable:

(1) The severity of the offense, including consideration of economic harm, physical harm, harm to the regulatory process, and number and scope of violations, with violations that cause physical harm to people or property being considered the most severe and violations that threatened such harm closely following;

(2) The conduct of the utility in preventing, detecting, disclosing and rectifying the violation;

(3) The financial resources of the utility (to ensure that the degree of wrongdoing comports with the amount of fine and is relative to the utility's financial resources such that the amount will be an effective deterrence for that utility while not exceeding the constitutional limits on excessive fines);

(4) The amount of fine in the context of prior Commission decisions; and

(5) The totality of the circumstances in furtherance of the public interest.[144]

[143] D.98-12-075, 84 CPUC2d 155, 182 (1998.)

[144] *Id*. at 182-85.

The fines adopted today appropriately apply these factors, as explained further below. Moreover, since we find aggravating factors and severe harm to the regulatory process, we impose a penalty on each Respondent that in total dollars for each utility is on the high end for an entity of its size. Importantly, this helps ensure future deterrence of similar violations by these and other utilities.

5.4.1. Severity of Offense

The first factor under D.98-12-075 is the severity of the offense. Respondents argue that because the disclosure violations cause "no 'physical' or 'economic' harm, they present pure matters of compliance without victims. Therefore, Respondents argue the alleged violations here cannot be characterized as the "most severe."[145] We do not reach the issue of whether Respondents caused economic harm because to do so would require speculation as to what might have happened had Respondents fully disclosed the RTB stock redemption proceeds in the Application. However, we do not need to find the violations here to be the "most severe" to characterize them as having a high level of severity.

D.98-12-075 provides that a "high level of severity will be accorded to violations of statutory or Commission directives, including violations of reporting or compliance requirements."[146] As the Commission states in D.98-12-075:

> Many potential penalty cases before the Commission do not involve any harm to consumers but are instead violations of reporting or compliance requirements. In these cases, the

[145] Respondents' OB at 61.

[146] 84 CPUC2d at 183.

> harm may not be to consumers but rather to the integrity of the regulatory processes.[147]

In D.98-12-075, the Commission noted Section 702 requires any public utility to comply with all Commission directives, stating that such compliance is "absolutely necessary to the proper functioning of the regulatory process. For this reason, disregarding a statutory or Commission directive, regardless of the effects on the public, will be accorded a high level of severity."[148] Further, harm to the regulatory process occurs where a utility unilaterally interprets Commission directives,[149] as the Respondents did here.

Respondents argue without citation[150] that the severity is reduced when the violations are omissions. To the contrary, the Commission has found withholding relevant information harms the regulatory process.[151]

We find that Respondents withheld relevant information and violated Commission directives when they failed to comply with the 1997 Resolutions' reporting requirements in filing their 2007 Application and thereby severely harmed the regulatory process. In considering the severity of the offense we also review the number and scope of violations. D.98-12-075 provides that "[a] single violation is less severe than multiple offenses. Multiple violations may occur when there are multiple individual violations or when there is a continuing

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147 *Id.*

148 84 CPUC2d at 182

149 *See, e.g.,* D.01-08-019.

150 Respondents' OB at 62.

151 D.01-08-109 at 134.

violation."[152] A continuing violation exists where the violation is not a one-time occurrence, but rather an on-going obligation.[153] For a continuing offense, Section 2108 counts each day as a separate offense.[154]

We find that Respondents' Rule 1.1 violation is continuous as well as severe, beginning with their December 20, 2007 application and continuing until full disclosure on November 19, 2009. The ILECs had an ongoing duty to disclose any RTB stock redemption per the 1997 Resolutions. The responsibility to disclose continued for almost two years from the filing of the Application with the omitted information until the ILECs did in fact fully disclose all RTB stock redemption proceeds on November 19, 2009. The failure to comply caused severe regulatory harm by not disclosing all RTB stock proceeds redeemed in a timely manner.[155]

We do not agree with Respondents that the Commission is prohibited from finding a Rule 1.1 violation and imposing penalties due to its 2010 determination that the gain-on-sale rules applied.[156] We note that given the Court's annulment of the 2010 Commission decision, the Commission may reach a new determination here, so long as it is consistent with the Court's ruling. The Court upheld the Commission's finding that the gain-on-sale rules applied, but did not independently review whether there was a Rule 1.1 violation given that it was not an issue raised on appeal. Therefore, since the Rule 1.1 issue was not

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[152] 84 CPUC2d at 183.

[153] D.15-04-024 at 209.

[154] 84 CPUC2d at 183.

[155] *See, e.g.*, D.15-06-035 at 4 (continuous violation found where utility failed to comply with an ongoing duty).

[156] Respondents OB at 2, fn. 10.

decided by the Court, we do not need to reach the issue of the binding effect of the Court's decision to find that the ILECs violated Rule 1.1 in structuring their application in a deceptive and misleading manner.

5.4.2. Conduct of the Utility

The second factor under D.98-12-075 focuses on the utility's actions and role in preventing, detecting, disclosing and rectifying the violation. [157]

5.4.2.1. Preventing the Violation

A utility's past record of compliance can be a mitigating factor for this criterion.[158] However, where a utility fails to prevent a violation, this criterion favors higher penalties.[159] To prevent a violation, utilities must take reasonable steps to ensure compliance with applicable laws and regulations.[160]

In D.01-08-019, the Commission determined there was a Rule 1.1 violation when non-disclosure occurred due to a party's unilateral interpretation of a Commission data request, resulting in failure to disclose information sought by the Commission.[161] There, Sprint (a wireless telecommunications company) submitted a request for additional numbering resources to the Commission. To evaluate the request, Commission staff requested utilization data encompassing all rate centers in a certain area. Sprint unilaterally interpreted the request only to require codes that were available to customers at the time of the request and consequently provided incorrect data. Sprint did so in response to both the initial data request and a subsequent data request, which was issued to clarify

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[157] 84 CPUC 2d at 183.

[158] *Id.* at 183.

[159] *Id.*

[160] *Id.*

[161] D.01-08-019.

the incorrect data. Ultimately, the Commission learned about all of the data upon reading an affidavit in an unrelated proceeding. However, the intent of the Commission's requests was to gain a comprehensive picture. Sprint violated Rule 1.1 because: 1) by unilaterally interpreting the data request, Sprint provided a narrower response then what the Commission was seeking; 2) the Commission cannot be expected to search through various proceedings for other data that might be different from the response provided; and 3) Sprint misled the Commission by providing incorrect data in response to multiple requests. Thus, a unilateral party interpretation of Commission requests which results in a narrower scope of disclosure than what the Commission sought constitutes a Rule 1.1 violation.[162]

Here, Respondents violated Rule 1.1 because they unilaterally and erroneously interpreted the Commission's 1997 Resolutions, which resulted in the 2007 Application failing to comply with Commission directives. In the 1997 Resolutions, the Commission directed that the ILECs notify the Commission upon any redemption of RTB stock. Similar to the Sprint situation faced by the Commission in D.01-08-019, the ILECs unilaterally interpreted the Commission's request to only require a subset of the data actually requested. The Commission sought data regarding the full RTB stock redemption, not narrowed, as the ILECs suggest, by the gain-on-sale rule or by their definition of the meaning of "any." The Commission's intent here, as in the Sprint proceeding, was to gain a comprehensive picture of the situation. Further, as in D.01-08-019, even if the ILECs provided this information in other proceedings, the Commission cannot be expected to search through various proceedings for data that may be

[162] D.01-08-019 at 11.

responsive when it directs such information to be provided in an application. Thus, as in D.01-08-019,[163] it is appropriate to find a Rule 1.1 violation in the instant case.

Moreover, there is no record evidence that suggests Respondents undertook a concerted effort to verify the accuracy and integrity of the 2007 Application before it was filed. To the contrary, Respondents knew that they had received well over $25 million in RTB redemption proceeds. Given the plain language of the 1997 Resolutions, Respondents knew or should have known that the Commission sought information about the entire RTB stock proceeds. Nonetheless, they admit they purposely withheld that information in their 2007 Application as part of their reasonable advocacy strategy.

The RTB was created to allow small rural telephone service providers to obtain loans to finance investments in an affordable way. This was a unique financial instrument providing loans to the ILECs. The 1997 Resolutions were a result of multiple general rate cases filed pursuant to Commission orders. The Commission explained in the 1997 Resolutions that it viewed the RTB stock as a unique asset that should be reported upon redemption. There is nothing in the 1997 Resolutions indicating that the Commission would want less than the full amount of RTB stock proceeds redeemed to be reported.

Therefore, it is reasonable that the Commission had an interest in reviewing the full amounts of redeemed RTB stock to make a just and reasonable ratemaking determination based on the unique character of the stock. In fact, this view is supported by the 2006 gain-on-sale decision, which specifically carves out special circumstances such as the RTB stock redemption from

[163] *Id.*

application of the gain-on-sale rules. Also, Respondents admit the RTB stock proceeds were a one-time event.[164] Thus, because Respondents had ample reason to believe the Commission sought disclosure of the entire RTB stock dissolution proceeds, Respondents' conduct in constructing the Application as an artifice weighs in favor of a larger penalty. This intentional conduct on behalf of the Respondents, although not necessary to establish a Rule 1.1 violation, is an aggravating factor in determining the penalty.[165] Far from preventing a violation, Respondents' intentional conduct in fact caused it. This factor supports a larger penalty, such as the ones we adopt today.

5.4.2.2. Detecting the Violation

Where a utility detects and yet fails to address a violation, this criterion weighs in favor of penalties.[166] Further, management's involvement in or tolerance of the violation is an aggravating factor, while a utility's planned improvements to internal procedures are a mitigating factor.[167]

To detect a violation, utilities must monitor their activities.[168] Monitoring activities involves evaluating compliance with statutes and Commission directives.[169] Evidence of how a utility monitored its activities can reveal potential deliberate wrongdoing. Deliberate wrongdoing affirms intent to violate a statute or a Commission directive. Deliberate wrongdoing affects the size of any penalty, not whether a violation of Commission rules occurred.[170] In

[164] Respondents' RB at 20.

[165] 84 CPUC2d at 183.

[166] *Id*.

[167] *Id*. at 191-92.

[168] *Id.* at 183.

[169] D.15-12-016 at 27.

[170] *Id.*

addition, "deliberate as opposed to inadvertent wrongdoing is an aggravating factor."[171] A violation occurs when a utility knew or should have known its conduct may violate statutory or Commission directives.[172]

Here, Respondents knew or should have known that their conduct, by omitting key information from the 2007 Application, was violating Commission directives. Instead of taking steps to detect violations or reveal wrongdoing, these Respondents took the opposite approach. Furthermore, characterizing their strategy as reasonable advocacy (wherein they only included information that supported their litigation position)[173] shows that their conduct was in fact deliberate. In addition to being an admission, it also shows the lengths to which Respondents were willing to go to attempt to hide certain information from Commission review. Respondents' conduct in relying on their reasonable advocacy strategy on behalf of their shareholders is thus an aggravating factor and argues for a penalty on the high side.

5.4.2.3. Disclosing and Rectifying the Violation

The utility must promptly disclose a detected violation to the Commission.[174] Prompt disclosure and rectification of the violation weighs in favor of mitigating penalties. Prompt disclosure and rectification was found where a company immediately stopped work when it was first contacted about possible CEQA violations.[175] On the other hand, promptness was not found

[171] 84 CPUC2d at 183.

[172] *Id.*

[173] Respondents' OB at 32.

[174] *Id.* at 184.

[175] D.04-04-068 at 19.

where pertinent information was disclosed two years after the fact.[176] When a matter of first impression arises, utilities should favor more robust reporting, rather than non-reporting.[177] Actions and omissions which mislead the Commission, and continue for a period of time to mislead the Commission, should result in significant penalties.[178]

Here, because of its unique nature, the RTB stock redemption is a matter of first impression. Thus, the ILECs should have favored more robust reporting. The ILECs instead acted to the contrary. At no point did Respondents take steps to prevent or mitigate the violation. As Cal Advocates points out, even if a different interpretation of the 1997 Resolutions was possible, Respondent knew what steps to take in the event of ambiguity:

> Q: If the Commission had a different interpretation and your clients had one interpretation, how would that be resolved?
>
> A. Through the application.[179]

Instead of disclosing the full amount of stock redemption as directed and then making their argument that only a small amount was owed to ratepayers under the gain-on-sale rules, Respondents failed to disclose the full amount of RTB redemption amounts for almost two years after filing the 2007 Application. The omission was intentional by Respondents' own admission,[180] and Respondents subsequently failed to make a full disclosure despite several related staff inquiries. Respondents continued to assert at the 2018 OSC hearings that

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[176] D.15-12-016 at 51.

[177] D.15-12-016 at 42 and Finding of Fact 17 at 57.

[178] *Id*. at 51.

[179] RT Vol. 2, 264:22-25; Cal Advocates' OB at 35, fn. 153.

[180] Respondents' RB at 60, fn. 276.

withholding information was the proper course of action. For example, as Cal Advocates point out, in response to ALJ Colbert's question: "Would the Commission need to know any, and all stock was being redeemed in order to determine the appropriate ratemaking treatment?" Siskiyou's witness answered that the Commission did not need to know this information.[181] Unilaterally deciding what information the Commission needs to know is inappropriate behavior by regulated utilities.[182] This is especially true in the case of Respondents, who received ratepayer subsidies from the CHCF-A Fund. Given the deliberate delay in full disclosure of the RTB stock redemption proceeds, the conduct of Respondents here weighs in favor of relatively larger penalties and the application of section 2108.

5.4.3. Financial Resources of the Utility

The third factor in setting fines is the financial resources of the utility. Here, the Commission must ensure against excessive fines while imposing an effective fine.[183] In D.98-12-075, the Commission explained:

> Effective deterrence … requires that the Commission recognize the financial resources of the public utility in setting a fine which balances the need for deterrence with the constitutional limitations on excessive fines. Some California utilities are among the largest corporations in the United States and others are extremely modest, one-person operations. What is accounting rounding error to one company is annual revenue to another. The Commission intends to adjust fine levels to achieve the objective of

[181] *See* Cal Advocates' OB at 34, fn. 150.

[182] *See, e.g.,* D.16-01-014 at 58, where the utility's reliance on unsound legal arguments to obfuscate information required by the Commission resulted in a much larger penalty than recommended by staff.

[183] S*ee also* D.98-12-075 at 7.

> deterrence, without becoming excessive, based on each utility's financial resources.[184]

In other words, an effective fine is one that reflects the severity of the harm at issue (the first factor examined above) and that is also proportionate to the size and resources of the offending entity. The fine therefore should be high enough to impact Respondents in such a way to deter future similar violations, yet not so high that the utility would have to shut down – sort of a sliding scale.[185]

Respondents have relatively modest annual net revenue (Calaveras $373,000; Cal-Ore $91,000; Ducor $608,000; Kerman $993,000; Ponderosa $2,417,095; Sierra $2,024,839; Siskiyou $1,466,479; Volcano $2,443,626).[186] We reflect the relatively small size of these companies by limiting the total dollar amount of the fine for each Respondent. Given the long continuous duration of the offense (688 days), we do this by applying a fine of $500 per offense.

The total dollar amount of the fines must be appropriate for the size of company yet be more than a slap on the wrist in order to constitute effective deterrence against utilities intentionally disregarding Commission directives as occurred in this proceeding. The fines adopted today will provide effective deterrence. We will permit Respondents to make payments over 24 months, with interest at the 90-day commercial paper rate, to ensure Respondents have sufficient operating capital.

5.4.4. Comparisons to Prior Commission Decisions

The fourth factor is whether the fine is reasonable in light of the Commission's prior decisions. "The Commission adjudicates a wide range of

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[184] D.98-12-075, 84 CPUC 2d at 184.

[185] *Id.*

[186] *See* Respondents' OB at 67, n. 302.

cases which involve sanctions, many of which are cases of first impression. As such, the outcomes of cases are not usually directly comparable."[187] However, per D. 98-12-075, the Commission has to address previous decisions that involve reasonably comparable factual circumstances and explain any substantial differences in outcome.[188]

We have before us a case of first impression where Respondents openly admit to omitting Commission-required information based on alleged First Amendment rights to what they term reasonable advocacy.[189] Respondents continue to deny any mistakes in failing to disclose the full amount of the RTB stock redemption in the Application, and continue to act without remorse.[190] Previously, the Commission found a utility's lack of remorse concerning and found a greater need for deterrence in setting a penalty.[191] We find several cases to be instructive where the Commission has found severe harm to the regulatory process, as we have here and discuss these below.

5.4.4.1. D.16-01-014

Raiser-CA was found to have violated Rule 1.1 by failing to comply fully with certain reporting requirements in a prior decision and to have misled "this Commission by an artifice or false statement of law by asserting multiple legal defenses that were unsound."[192] Accordingly, the Commission fined Raiser-CA

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[187] 84 CPUC 2d at 184.

[188] *Id.*

[189] Respondents' RB at 60, fn. 276.

[190] *See* Respondents' OB at 32.

[191] Cal Advocates' OB at 36, citing In Re S. California Gas Co., (D.01-06-080) June 28, 2001 at 17, stating "It is troubling that SoCalGas demonstrates no remorse for its actions. SoCalGas' lack of contrition concerns us, and the need for deterrence is greater here than it would be for a party that acknowledges error and agrees not to repeat it."

[192] D.16-01-014 at 53.

$7,626,000 and Raiser-CA's license was suspended until it paid the penalty. There were five continuous violations. Each violation was penalized at $5,000 per day the violation continued. Two of the violations lasted 328 days; two violations lasted 323 days; one violation lasted 168 days. The violations consisted of Raiser-CA's failure to disclose certain information.

As background, D.13-09-045 created a new category of transportation charter-party carriers called Transportation Network Companies (TNCs). The Decision set out requirements with which TNCs must comply in order to operate in California. Raiser-CA was aware of the requirements yet failed to comply with them even through it had the ability to do so. Instead, Raiser-CA raised unsound legal arguments against having to disclose the information. As a result, the Commission found Raiser-CA in violation of Rule 1.1.

In terms of sanctions, Raiser-CA harmed the regulatory process by failing to produce the required information because the failure frustrated the Commission's ability to evaluate the impact of the TNC industry on California passengers. Further, in terms of utility conduct, Raiser-CA had the ability to comply, yet declined to do so by interposing unsound legal arguments and objections.[193]

The Commission took into account that Raiser-CA shares a corporate structure (and assets) with Uber and Raiser, LLC. Raiser-CA had gross revenue of over $40 million and Uber had a gross annual revenue of about $720 million. Further, the sanction imposed was found appropriate in terms of the public interest because Raiser-CA has a sizeable market share of the TNC operations in

[193] D.16-01-014 at 58.

California, which the Commission must analyze. Thus, being deprived of Raiser-CA data created a significant gap in impact analysis.

In both D.16-01-014 and here, Raiser-CA and Respondents had the ability to comply with Commission directives but failed to do so. In both D.16-01-014 and here, Raiser-CA and Respondents purposely did not submit the requested information and posed multiple unsound legal arguments against having to disclose the information.

Here, Respondents filed the 2007 Application, but did not make the entire required disclosure nor admit therein that the full disclosure was not being made. As a result, neither Commission staff nor the Commission realized the omission until almost two years later. In both cases the regulatory process was harmed. Yet, the magnitude of the harm is much larger in the current case because a deceptive artifice was used to hide the fact that the full disclosure required by the Resolutions was not being made. Thus, significantly more Commission and staff time was wasted by Respondents' hide the ball litigation strategy. Respondents' advocacy had a more severe impact on the regulatory process in the instant case than in the Raiser-CA case. In mitigation, however, the ILECs are considerably smaller than Raiser-CA, even without considering Uber's financial situation. Thus, we find our proposed penalties are proportionate with the penalties imposed in the Raiser-CA case.

5.4.4.2. D.01-08-019

Sprint was found in violation of Rule 1.1 due to omissions in response to a Commission data request and fined $200,000. The fine was based on 20 violations with a penalty of $10,000 each.

The Commission in that case had asked Sprint to provide number utilization and NXX codes for a certain geographic area. While Sprint

acknowledged that it made an error in its data response, Sprint argued that the omission was unintentional and due to differences in interpretation regarding the intent of the data request. Sprint unilaterally interpreted the data request to not include NXX codes that were not yet available for assignment at the date of the request.[194] The Commission found that Sprint's interpretation of the data request was unduly narrow, while the Commission's intention was to gain a comprehensive picture in order to carry out its regulatory duties to ensure that scarce numbering resources were properly allocated based upon legitimate need.[195]

Sprint also argued that the Commission already knew of the NXX codes that were omitted from the data response. But the Commission noted that Sprint has no basis to presume how Commission staff may or may not apprehend, retain, relay, or crosscheck information.[196]

In terms of sanctions, Sprint's omission did not cause any physical or economic harm to others. There was no evidence that Sprint benefitted from the omission. The omission affected few, if any, consumers but it had the potential to deprive other carriers' customers of numbers. A high level of severity was applied in this case, however, because Sprint's actions harmed or undermined the regulatory process.

Sprint made no concerted effort to verify the accuracy and integrity of the data response prior to submission. Regarding accuracy and integrity of data responses the Commission has said:

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[194] D.01-08-019 at 8.

[195] *Id.* at 11.

[196] *Id.* at 11.

> "A carrier should not avoid responsibility for the truthfulness of its representations to the Commission simply by neglecting to verify the completeness of material statements made by its employees or agents before releasing them to staff."[197]

Sprint never brought the nondisclosure to the Commission's attention.[198] The nondisclosure undermined and disadvantaged both the Commission's credibility and its ability to prepare its own case before a court.[199] The Commission found 20 violations based on each separate data element that Sprint failed to disclose in its data response.

> As an important factor in its decision the Commission said: "The relevant point, however, is that staff must be able to rely upon the representations made to it in response to data requests in order to carry out its duties of protecting the public interest effectively."[200]

In the Sprint case, however, there was no claim of reasonable advocacy. Sprint was not deliberately omitting information from its regulator, as part of its litigation strategy as in the instant case. Thus, $200,000 was determined significant enough to deter future violations by Sprint and others.

One similarity between the cases of Sprint and Respondents is that both Sprint and the ILECs unilaterally interpreted a Commission directive. However, Sprint admitted that it made a mistake in its data response, while Respondents do not admit that they made any mistake. In fact, Respondents instead admit to an intentional strategy to hide the full amounts of RTB stock redemption from the Commission in order to benefit shareholders. Thus, the need for deterrence

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[197] *Id.* at 18.

[198] *Id.*

[199] *Id.* at 19.

[200] *Id.* at 23.

of future utility conduct in this case is considerably higher than in the Sprint case, and we will adopt total fines that represent this need while still recognizing the smaller size of Respondents.

5.4.4.3. D.15-04-008

California American Water Company (Cal-Am) was found to have violated Rule 1.1 and fined $870,000. The penalty was $15,000 per violation for 58 separate violations, representing 58 data points that Cal-Am failed to disclose.

As background, Cal-Am was required, as part of a general rate case, to provide a list of projects that had been authorized but had not yet been built. Upon further inquiry by Cal Advocates, Cal-Am disclosed that there were actually 62 authorized, unbuilt projects in total.[201]

Cal-Am argued that it interpreted the data required to mean the Commission was interested in projects that likely would not be built, not projects that had simply run behind schedule. Thus, Cal-Am only included projects it thought would not be built in 2013.[202]

Cal-Am further argued that it had not concealed the other projects as its Strategic Capital Expenditure Plans included the information.[203] As in the Sprint case, the Commission noted that Cal-Am has no basis to presume how Commission staff may or may not apprehend, retain, relay, or crosscheck information.[204]

In terms of sanctions, the Commission found that Cal-Am's omissions undermined the regulatory process by failing to report material information. The

[201] D.15-04-008 at 2-3. Of the 62, four had been revealed in the original application.

[202] *Id.* at 7.

[203] *Id.* at 8.

[204] *Id.* at 9.

omissions also resulted in economic harm because the omissions undermined the Commission's ability to properly assess all material facts relevant to reaching a just and reasonable decision in Cal-Am's general rate case. The fact that there were 58 violations added to the severity of the offense. "Disregarding a statutory or Commission directive violates the integrity of the regulatory process and breaks the regulatory compact between a utility and the public."[205]

Further, Cal-Am failed to show any company rules or processes to prevent or detect inaccurate disclosure. The Commission found that Cal-Am should have made a more concerted effort to ensure the accuracy and integrity of its submission. The Commission said:

> "A utility should not avoid responsibility for the truthfulness of its representations to the Commission simply by neglecting to verify the completeness of material statements made by its employer or agents before releasing them to the Commission and staff."[206]

In addition, Cal-Am failed to promptly bring the nondisclosure to the Commission's attention.[207] Cal-Am's omission would have never been discovered without further inquiry by Cal Advocates.[208]

In considering Cal-Am's financial resources, the Commission noted that Cal-Am is owned by American Water Company (one of the largest private water providers within California and the county) and American Water Company has assets in the billions of dollars.[209] We found that a sanction of $870,000 was

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[205] *Id.* at 15.

[206] *Id.* at 17.

[207] *Id.* at 17.

[208] *Id.* at 18.

[209] In 2015 we stated that American Water Company was the second largest water provider in California and the third largest in the county. (D.15-04-008 at 19.)

significant enough to deter future violations yet not excessive in light of the financial resources available to Cal-Am. The sanction was found to be in the public interest because it is essential that the Commission have access to true and complete information to carry out Commission duties to ensure ratepayer dollars are used efficiently.[210]

In the instant proceeding, Respondents also unilaterally interpreted Commission instructions by only including some of the information the Commission sought. However, by Respondents' own admission, this was part of an intentional strategy termed reasonable advocacy. The penalty here must provide effective deterrence, not only for Respondents but for all regulated utilities, when they are faced with the question of how much required information to reveal to the Commission. Not only did Respondents fail to show any company rules or processes to prevent or detect inaccurate or incomplete disclosure, it is clear that Respondents deliberately intended to leave the Commission, its staff, and potential intervenors with the impression that the RTB stock redemption was a *de minimus* amount.

Finally, throughout this proceeding, Respondents have continued to assert that they fully complied with the Commission's directives. This leads us to the conclusion, similar to the one we reached regarding Southern California Gas Company in D.01-06-080, that Respondents have shown no remorse. Thus, Respondents' conduct exacerbated the severity of the harm caused to the regulatory processes. It is far more egregious than the conduct in the Cal-Am case. This is an aggravating factor, and calls for proportionately higher total

[210] D.15-04-008 at 19.

penalties for Respondents than imposed on Cal-Am while also recognizing each utility's relative size and financial resources.

5.4.5. Totality of the Circumstances

The fifth factor we consider as we evaluate the reasonableness of the fine is the totality of the circumstances, with an emphasis on protecting the public interest. A fine should be tailored to the unique facts and the totality of circumstances of each case.[211] When making this assessment, the Commission considers facts that tend to mitigate or exacerbate the degree of wrongdoing. In all cases, the harm will be evaluated from the perspective of the public interest.[212]

In this case, many factors point to a higher total penalty: Respondents severely harmed the regulatory process; the violation was intentional; the violation was continuous; and Respondents showed no evidence of effective prevention, detection, correction, disclosure or rectification of the violation. To the contrary, Respondents' artifice is a classic example of a "hide the ball" scheme by a utility. Rather than acknowledge wrongdoing, Respondents justify their omission under a First Amendment right to engage in reasonable advocacy, thereby seeking to justify their failure to comply with Commission directives. There is no such right to hide information from the utility regulator. Deterrence of this conduct is essential to regulation.

In D.98-12-075, the Commission explained the policy of deterrence to justify a fine:

> The purpose of a fine is to go beyond restitution to the victim and to ***effectively deter further violations*** by this perpetrator **or others**… Effective deterrence creates an incentive for public utilities to ***avoid violations***. Deterrence is particularly

[211] 84 CPUC2d at 184.

[212] D.15-08-032 at 43.

> important against violations which could result in public harm, and particularly against those where severe consequences could result.[213]

Here, the fines are assessed for the purpose of deterrence. This will help ensure that Respondents and others disclose required information, rather than unilaterally determine to disclose only selected information based on whether the information supports the utility's litigation strategy.

Any fine imposed must be within constitutional limitations on excessive fines while proportionate to the harm caused, the utility's conduct, the utility's financial resources and precedent.[214] Since Respondents are all relatively small companies, the fines imposed herein are significant.

From the public interest perspective, it is critical that the Commission have access to full and accurate information from utilities to carry out the Commission's responsibilities to set equitable, just, and reasonable rates. Respondents' violation of Rule 1.1 impeded the Commission from fulfilling its obligations to protect the public interest. In considering the totality of circumstances and the degree of wrongdoing in this case, we conclude that the penalties we impose are substantial penalties for utilities of this size and therefore are appropriate. At the same time, we will permit payment over 24 months to avoid any adverse effect on operating capital.

6. Return of $3,037 to Ratepayers

The *Ponderosa* Court annulled D.10-06-029, finding that the Commission's allocation of redemption proceeds to ratepayers constituted both an illegal appropriation of the ILECs' property and a violation of the retroactive

[213] 84 CPUC2d at 182 (emphasis added).

[214] *Id.*

ratemaking doctrine. The Court remanded the case back to the Commission for reallocation of the redemption proceeds in a manner consistent with its decision.[215] The Court found one exception to that reallocation: the gain attributable to the shares in rate base. In particular, the Court directed that:

> "[The ILEC] is entitled to all proceeds from the redemption of those [purchased class B] shares with the exception of the gain, *i.e.*, the $0.04435 per share residual amount, attributable to the shares in rate base between January 1, 2004 and April 11, 2006. That gain should be allocated 67 percent to ratepayers and 33 percent to shareholders under the Gains on Sale Decision."[216]

The $0.04435 per share residual amount reflects the $3,037 Applicants proposed in the 2007 Application to return to ratepayers.[217] We order those amounts shown below to be returned to ratepayers, via a check to the CHCF-A Fund:

Line No.	Company	Amounts Allocated to Ratepayers
1	Calaveras	$47.00
2	Cal-Ore	$190.00
3	Ducor	$42.00
4	Happy Valley	$0.00
5	Hornitos	$0.00
6	Kerman	$0.00
7	Ponderosa	$2,558.00
8	Sierra	$0.00
9	Siskiyou	$200.00
10	Volcano	$0.00
11	Winterhaven[218]	$0.00
12	**TOTAL**	**$3,037.00**

[215] Consistent with the Court's directions, the Commission ordered all amounts previously credited to ratepayers in the amount of $31,299,810.13 to be returned to the ILECs, pending further Commission instructions. *See* D.12-06-003.

[216] *Ponderosa v. Pub. Util. Comm'n*, 197 Cal. App. 4th 48, 59-60 (2011).

[217] *See* D.10-06-029 at 11.

[218] We note that three of these companies, Happy Valley, Hornitos and Winterhaven, are not Respondents to the current OSC, nor do they owe any money to ratepayers.

7. Administrative Matters

In this proceeding, the assigned ALJs and Chief ALJ have issued rulings in response to the various motions filed by the parties. This decision affirms all rulings issued in this proceeding. Those motions and requests not expressly ruled on are deemed denied.

8. Appeal and Review of Presiding Officers' Decision

Pursuant to Rule 14.4 (Commission's Rules of Practice and Procedure), any party may file an appeal of the Presiding Officers' decision within 30 days of the date the decision is served. In addition, any Commissioner may request review of the Presiding Officers' decision by filing a request for review within 30 days of the date the decision is served. Appeals and requests for the review shall set forth specifically the grounds on which the appellant or requestor believes the Presiding Officers' decision to be unlawful or erroneous. Vague assertions as to the record or the law, without citation, may be accorded little weight.

9. Assignment of Proceeding

Liane M. Randolph is the assigned Commissioner. Mary McKenzie and W. Anthony Colbert are the assigned ALJs and the Presiding Officers in this proceeding.

Findings of Fact

1. The Commission is a regulatory body of constitutional origin and derives its powers from the California State Constitution and the California Legislature, with jurisdiction over California telephone companies.

2. Rule 1.1 states that any person who transacts business with the Commission agrees to comply with the laws of this State, and never to mislead the Commission or its staff by an artifice or false statement of fact or law.

3. A Rule 1.1 violation occurs when there has been a lack of candor, withholding of information, or failure to correct misinformation or respond fully to data requests by the Commission; non-disclosure does not have to be intentional, and it may occur due to carelessness, ignorance or mistake.

4. A person or entity who violates Rule 1.1 may be sanctioned no less than $500 and, during the period of the violations at issue here, no more than $20,000 for each offense; every violation can be considered a separate and distinct offense; and, in the case of continuing violation, each day shall be a separate and distinct offense.

5. In 1971, Congress created the RTB as part of the U.S. Department of Agriculture for the purpose of making capital available to rural telephone providers at reasonable costs to allow infrastructure investment.

6. Respondents sought and received Commission authorization to enter into RTB loan agreements and, between 1972 and 2006, obtained substantial loans from the RTB; one condition for receiving the loans was that the ILECs were required to allocate 5% of each loan to the purchase of RTB stock.

7. Respondents obtained three types of stock shares from the RTB: (a) Class B Mandatory Stock Purchase, (b) Class B Patronage Refunds, and (c) Class C Purchased Stock.

8. In 1997, the Commission issued decisions and resolutions specifying "[w]hen [an ILEC] redeems any Rural Telephone Bank stock, it shall file an application with the Commission to request a determination for the gain on the redemption of the Rural Telephone Bank stock."

9. In 2006 the Rural Telephone Bank dissolved and the bulk of the shares were distributed to the ILECs. A residual distribution occurred in November 2007.

10. On December 20, 2007, Respondents filed A.07-12-026 in which they proposed distribution to their customers of $3,037 with respect to RTB stock redemption proceeds.

11. On November 19, 2009, Respondents revealed that they had received $31,299,810.13 in at par and residual stock redemptions, the bulk of which were received as patronage shares worth more than $25,000,000.

12. On June 28, 2010 in D.10-06-029, the Commission determined that the jurisdictionally separated intrastate portion of the total $31,299,810.13 in RTB stock redemption proceeds should be credited back to ratepayers, and Respondents were ordered to show cause why they should not be subject to penalties for (1) violating Rule 1.1, and (2) violating the Commission's CHCF-A rules.

13. Respondents appealed D.10-06-029 and, on July 5, 2011, the appellate Court annulled D.10-06-029 with respect to allocating the RTB stock redemption proceeds to ratepayers; the appellate Court did not alter the Commission's decision requiring that Respondents show cause as to why they should not be fined for violating Rule 1.1 and the CHCF-A rules; the matter was remanded back to the Commission for further proceedings consistent with the Court's decision; the Commission ordered all amounts previously credited to ratepayers to be returned to the ILECs, pending further Commission instructions; the Court also ordered further Commission consideration of returning $3,037 to ratepayers.

14. On March 10, 2011 in D.11-03-030, the Commission fined Respondents for violating Rule 1.1 and the Commission's CHCF-A rules; Respondents' Application for Rehearing of D.11-03-030 was granted by D.11-12-057.

15. On October 8, 2015, the Assigned Commissioner issued an amended scoping memo to address both the rehearing of D.11-03-030 and the issues

remanded back to the Commission by the Court; on June 9, 2017, the assigned Commissioner and assigned ALJ issued an OSC why Respondents should not be sanctioned by the Commission for violation of Rule 1.1; the instant proceeding is, in essence, a continuation of the June 24, 2010 OSC issued in D.10-06-029, and the rehearing of D.11-03-030 granted by D.11-12-057.

16. Eleven days of evidentiary hearings were held in April, May, and July 2018; oral argument was held on November 5, 2018 before the Commission *en banc*.

17. Respondents were ordered by the following language to fully disclose redemptions of RTB stock: "When any Rural Telephone Bank stock is redeemed, [Respondent] should file an application with the Commission to request a determination of the appropriate ratemaking treatment for the gain on the redemption of the RTB stock."

18. In the ordering language "any" does not require that all shares be redeemed; rather, "any" means when one or more shares are redeemed; a redemption triggers an event and, if there is more than one redemption, each redemption triggers an event; the event is the filing of an application for a Commission determination of the appropriate ratemaking treatment.

19. It is not logical for the Commission to direct disclosure of only "some" or "one" share(s) of RTB stock because the Commission cannot make an informed, equitable, just and reasonable ratemaking determination when it has less than all the facts regarding the RTB.

20. Respondents fail to show why the Commission would need or want less than the full disclosure of the RTB redemption proceeds.

21. The initial application in A.07-12-026 does not specifically disclose all RTB stock redemption proceeds given that three Respondents did not disclose any

RTB stock redemptions, and five Respondents failed to disclose the full amounts of the RTB stock redemptions.

22. The Commission often requires more information than may be relevant or beneficial to the utility's litigation position; the required information is that which is directed by law and Commission decisions; at a minimum a regulated utility must provide all required information, and may then make policy or legal arguments as to why some or all of the disclosed information is irrelevant.

23. Respondents could not have known in December 2007 how the Commission would apply the gain-on-sale rules from D.06-05-041 because (a) D.06-05-014 provides an exception for sales of assets that constituted extraordinary circumstances and (b) whether or not redemption of patronage shares by the RTB was in fact a sale of an asset, patronage shares were redeemed, which triggered a requirement that Respondents notify the Commission and provide full disclosure of information.

24. Respondents themselves emphasize the extraordinary circumstance of the RTB stock redemption by characterizing it as a one-time regulatory event that is unlikely to be repeated.

25. Respondents wasted valuable staff, party, and Commission time by failing to disclose the full amounts of the RTB stock redemptions within the 2007 Application, and continuing their failure to disclose the full amounts for nearly two years despite several clear opportunities via staff data requests to make a full disclosure.

26. Respondents were not practicing reasonable advocacy when they failed to fully disclose RTB stock redemption in the Application.

27. Respondents are not correct that actual notice was provided of RTB redemptions by mentioning patronage shares in Footnotes 1 and 21 within the 2007 Application.

28. Respondents' duty to disclose RTB stock redemptions was not met via constructive notice by relying on other unrelated pleadings because the Commission has no obligation to search through multiple unrelated filings for the information it mandated that Respondents report directly via the 2007 Application.

29. Respondents failed to provide either actual or constructive notice of the full amount of the RTB redemption proceeds.

30. Outcomes other than the one in D.10-06-057 could have been reached had Respondents included the full amount of the RTB stock proceeds in the 2007 Application as required.

31. It was not possible for Respondents to know when filing the 2007 Application how the Commission would later decide how to apply its rules regarding gain-on-sale and whether or not application of gain-on-sale rules would authorize anything less than full disclosure of RTB stock redemptions.

32. Respondents' omission of the full details of the RTB stock redemptions was material.

33. Respondents intentionally violated Rule 1.1 by failing to provide full disclosure of RTB redemption proceeds in the 2007 Application, admitting that they sheltered as much of the RTB stock redemption proceeds as possible from Commission review, limiting information regarding patronage share redemptions to two vague and incomplete footnotes that did not include redemption values, and limiting information on redemptions to only those shares held in ratebase.

34. The deliberate omission by Applicants of the bulk of the RTB redemption proceeds in the 2007 Application was egregious, beyond the bounds of reasonable advocacy, and an artifice intended to mislead the Commission.

35. Respondents are small companies by many measures but each received proportionately significant sums of money as part of the $31 million in RTB redemption proceeds, most of which were not disclosed to the Commission.

36. Respondents failed to cure the failure to disclose all RTB redemption proceeds for 688 days.

37. A persistent failure by a regulated utility to act is a continuing violation because otherwise it would eviscerate the Commission's power to require self-reporting by destroying the Commission's power to sanction noncompliance.

38. Considering the continuous nature of the violation, the total dollar amounts of the fines are significant given the small relative size of Respondents and, as a result, the use of $500 per offense under Section 2107 does not represent imposition of the minimum penalty.

39. The penalties imposed on each of the Respondents are substantial and proportionate to the violation committed.

40. Five Respondents reported within the 2007 Application the value of Class B shares that had been included in ratebase and proposed returning $3,307 to ratepayers. It is reasonable to reduce the fines for those five Respondents by 25%.

41. Fines for CHCF-A and Rule 1.1 violations imposed by D.11-03-030 were paid in 2011 by the Respondents.

42. The offenses committed by Respondents were severe because they harmed the regulatory process and continued for nearly two years.

43. Respondents' conduct shows a failure to prevent the violation by their failure to undertake a concerted effort to verify the accuracy and integrity of the 2007 Application, even though they had received over $25 million in RTB redemption proceeds, an amount that was not directly and clearly revealed in the 2007 Application.

44. Respondents' conduct in relying on their reasonable advocacy strategy on behalf of their shareholders is an aggravating factor in the offense.

45. Respondents' conduct in not rectifying the violation for nearly two years is an aggravating factor.

46. Respondents have relatively modest annual net revenues.

47. Respondents continue to assert that they fully complied with Commission directions and have shown no remorse for their actions.

48. Respondents deliberately intended to leave the Commission, its staff, and potential intervenors with the impression that the RTB stock redemption was a de minimus amount.

49. Respondents severely harmed the regulatory process; the violation was intentional; the violation was continuous; and Respondents showed no evidence of effective prevention, detection, correction, disclosure or rectification of the violation.

50. Although we find the amount of the fines to be reasonable considering all the facts in this case, the amount of the fines adopted herein may adversely affect Respondent's operating capital.

51. Allowing payment over 24 months is appropriate.

52. The $0.04435 per share residual amounts referenced in the Ponderosa Court's order is the $3,037 certain of the Applicants proposed in the 2007Application to return to ratepayers.

Conclusions of Law

1. A Rule 1.1 violation occurs when there has been a lack of candor, withholding of information, or failure to correct misinformation or respond fully to data requests by the Commission; non-disclosure does not have to be intentional, and it may occur due to carelessness, ignorance or mistake.

2. The instant proceeding is the rehearing of D.11-03-030 (that found violations of Rule 1.1), and the *Ponderosa* decision does not bar our inquiry into whether certain ILECs violated Rule 1.1 in the 2007 Application since the Rule 1.1 issue was never before the Court.

3. The standard of proof that must be met in Rule 1.1 violation proceeding is preponderance of the evidence.

4. Where the OSC establishes a prime facie case based on an existing record that one or more Respondents have violated Rule 1.1., the burden of proof is on to Respondents to show by a preponderance of the evidence that the prima facie case is invalid.

5. There is no requirement in the law or past Commission decisions for disclosure of RTB proceeds in the seven filings listed on page 14 of the OSC, including CHCF-A filings.

6. The fines imposed in D.11-03-030 for failure by Respondents to disclose the redeemed RTB stock proceeds in Respondents' CHCF-A filings should be reversed, and the amounts of those fines credited back to Respondents with interest at the 90-day commercial paper rate.

7. Respondents had adequate notice that they were required to notify the Commission when any RTB stock was redeemed, and that the notification to the Commission should include all information regarding the redemption, not

limited to a subset of the information supportive of Respondents' litigation position.

8. There was no lack of notice to Respondents of the duty to provide full disclosure of the RTB stock redemption proceeds and, therefore, Respondents' due process rights were not violated.

9. There is neither tension nor conflict between a regulated utility's (a) duty to follow Commission directives and disclose all required information and (b) First Amendment rights to reasonable advocacy on behalf of their shareholders to save them money.

10. The First Amendment does not permit utilities to hide information required by the regulator under the guise of reasonable advocacy.

11. Based on preponderance of the evidence, Respondents violated their duty to disclose required information to the Commission by not disclosing the full amount of RTB stock redemption in their 2007 Application.

12. Respondents are entitled to advocate for any position that they wish in an Application to the Commission, but they are not entitled to mislead the Commission by omitting pertinent information that they were directed to provide.

13. The Commission's ordering language regarding Respondents' notifying the Commission upon any redemption of RTB shares does not delegate the Commission's authority over the determination of appropriate ratemaking treatment of the proceeds from those redemptions to Respondents.

14. There is nothing in the ordering language regarding Respondents' notifying the Commission upon any redemption of RTB shares that directs Respondents to only disclose the amount of redeemed RTB stock that was held in ratebase.

15. As a matter of law, Respondents are wrong in stating it "would violate the First Amendment and chill future reasonable advocacy to penalize the companies for structuring their disclosures in the Application to match their requested relief."

16. An omission to provide correct information can constitute a Rule 1.1 violation if the consequence is to mislead the Commission about a matter which is material to a proceeding.

17. Rule 1.1 and the proper functioning of the Commission's proceedings require actual notice of all relevant and material facts, and constructive notice cannot be used to remedy deficiencies in a document presented to the Commission.

18. Respondents misled the Commission by an artifice and false statements including omissions and thereby violated Rule 1.1.

19. The statutory fine of $500 per violation should be applied, since $500 times the number of days the violation occurred will result in substantial total fines given the relative size of these companies.

20. The duration of the violations should be calculated from the date the 2007 Application appeared in the Commission's Daily Calendar to the date Respondents filed the full disclosure of the RTB redemption proceeds.

21. The public interest requires that each Respondent be fined $344,000.

22. Five Respondents disclosed a portion of their RTB stock redemption proceeds in the 2007 Application and should be granted a 25% reduction in the penalties adopted today.

23. CHCF-A fines paid pursuant to D.11-03-030 should be returned with interest at the 90-day commercial paper rate as a credit against Rule 1.1 penalties adopted herein.

24. Penalties previously paid by Respondents for Rule 1.1 violations should be credited against the penalties adopted herein.

25. Respondents should be required to pay the net penalty amounts included in the text of the decision within the section titled "Adopted Sanctions."

26. Respondents should be permitted to make equal monthly payments over a period up to 24 months of the fines adopted herein, with interest at the 90-day commercial paper rate.

27. Consistent with the Court of Appeals' order, $3,037 should be returned to ratepayers.

O R D E R

1. Within 20 days of the effective date of this order, Calaveras Telephone Company shall pay a fine of $221,794 by check or money order payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102. Calaveras Telephone Company shall write on the face of the check or money order "For deposit to the General Fund per Decision _____." Calaveras Telephone Company shall file and serve in this proceeding a notice stating that the payment has been made and the amount of the payment. Alternatively, within 20 days of the effective date of this order, Calaveras Telephone Company shall begin paying the fine of $221,794 in equal monthly payments for up to 24 months with interest at the 90-day commercial paper rate, shall tender the monthly payments to the Commission's Fiscal Office, and shall file and serve in this proceeding a notice with each monthly payment stating that payment has been made and the amount of the payment.

2. Within 20 days of the effective date of this order, Cal-Ore Telephone Company shall pay a fine of $221,794 to the State of California General Fund,

shall tender that payment by check or money order payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102. Cal-Ore Telephone Company shall write on the face of the check or money order "For deposit to the General Fund per Decision _____." Cal-Ore Telephone Company shall file and serve in this proceeding a notice stating that the payment has been made and the amount of the payment. Alternatively, within 20 days of the effective date of this order, Cal-Ore Telephone Company shall begin paying the fine of $221,794 in equal monthly payments for up to 24 months with interest at the 90-day commercial paper rate, shall tender the monthly payments to the Commission's Fiscal Office, and shall file and serve in this proceeding a notice with each monthly payment stating that payment has been made and the amount of the payment.

3. Within 20 days of the effective date of this order, Ducor Telephone Company shall pay a fine of $221,794 to the State of California General Fund, shall tender that payment by check or money order payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102. Ducor Telephone Company shall write on the face of the check of money order "For deposit to the General Fund per Decision _____." Ducor Telephone Company shall file and serve in this proceeding a notice stating that the payment has been made and the amount of the payment. Alternatively, within 20 days of the effective date of this order, Ducor Telephone Company shall begin paying the fine of $221,794 in equal monthly payments for up to 24 months with interest at the 90-day commercial paper rate, shall tender the monthly payments to the Commission's Fiscal Office, and shall file and serve in this proceeding a notice

with each monthly payment stating that payment has been made and the amount of the payment.

4. Within 20 days of the effective date of this order, Kerman Telephone Company shall pay a fine of $302,794 to the State of California General Fund, shall tender that payment by check or money order payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102. Kerman Telephone Company shall write on the face of the check or money order "For deposit to the General Fund per Decision _____." Kerman Telephone Company shall file and serve in this proceeding a notice stating that the payment has been made and the amount of the payment. Alternatively, within 20 days of the date of this order, Kerman Telephone Company shall begin paying the fine of $302,794 in equal monthly payments for up to 24 months with interest at the 90-day commercial paper rate, shall tender the monthly payments to the Commission's Fiscal Office, and shall file and serve in this proceeding a notice with each monthly payment stating that payment has been made and the amount of the payment.

5. Within 20 days of the effective date of this order, The Ponderosa Telephone Company shall pay a fine of $221,794 to the State of California General Fund, shall tender that payment by check or money order payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102. Ponderosa Telephone Company shall write on the face of the check or money order "For deposit to the General Fund per Decision _____." Ponderosa Telephone Company shall file and serve in this proceeding a notice stating that the payment has been made and the amount of the payment.

Alternatively, within 20 days of the effective date of this order, The Ponderosa Telephone Company shall begin paying the fine of $221,794 in equal monthly payments for up to 24 months with interest at the 90-day commercial paper rate, shall tender the monthly payments to the Commission's Fiscal Office, and shall file and serve in this proceeding a notice with each monthly payment stating that payment has been made and the amount of the payment.

6. Within 20 days of the effective date of this order, Sierra Telephone Company shall pay a fine of $302,794 to the State of California General Fund, shall tender that payment by check or money order payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102. Sierra Telephone Company shall write on the face of the check or money order "For deposit to the General Fund per Decision _____." Sierra Telephone Company shall file and serve in this proceeding a notice stating that the payment has been made and the amount of the payment. Alternatively, within 20 days of the effective date of this order, Sierra Telephone Company shall begin paying the fine of $302,794 in equal monthly payments for up to 24 months with interest at the 90-day commercial paper rate, shall tender the monthly payments to the Commission's Fiscal Office, and shall file and serve in this proceeding a notice with each monthly payment stating that payment has been made and the amount of the payment.

7. Within 20 days of the effective date of this order, The Siskiyou Telephone Company shall pay a fine of $221,794 to the State of California General Fund, shall tender that payment by check or money order payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102. Siskiyou

Telephone Company shall write on the face of the check or money order "For deposit to the General Fund per Decision _____." Siskiyou Telephone Company shall file and serve in this proceeding a notice stating that the payment has been made and the amount of the payment. Alternatively, within 20 days of the effective date of this order, The Siskiyou Telephone Company shall begin paying the fine of $221,794 in equal monthly payments for up to 24 months with interest at the 90-day commercial paper rate, shall tender the monthly payments to the Commission's Fiscal Office, and shall file and serve in this proceeding a notice with each monthly payment stating that payment has been made and the amount of the payment.

8. Within 20 days of the effective date of this order, Volcano Telephone Company shall pay a fine of $302,794 to the State of California General Fund, shall tender that payment by check or money order payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102. Volcano Telephone Company shall write on the face of the check or money order "For deposit to the General Fund per Decision _____." Volcano Telephone Company shall file and serve in this proceeding a notice stating that the payment has been made and the amount of the payment. Alternatively, within 20 days of the effective date of this order, Volcano Telephone Company shall begin paying the fine of $302,794 in equal monthly payments for up to 24 months with interest at the 90-day commercial paper rate, shall tender the monthly payments to the Commission's Fiscal Office, and shall file and serve in this proceeding a notice with each monthly payment stating that payment has been made and the amount of the payment.

9. Within 20 days of the date of this order, each of the following companies as shown in the chart below shall pay the following amounts by check or money order payable to the California High Cost Fund A. The check or money order shall be delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102 with a copy served on the Director of the Communications Division at 505 Van Ness Avenue, San Francisco, CA 94102.

Line No.	Company	Amounts Returned to Ratepayers
1	Calaveras Telephone Company	$47.00
2	Cal-Ore Telephone Company	$190.00
3	Ducor Telephone Company	$42.00
4	The Ponderosa Telephone Company	$2,558.00
5	The Siskiyou Telephone Company	$200.00
6	TOTAL	$3,037.00

10. Application 07-12-026 is closed.

This decision is effective today.

Dated _____, at San Francisco, California.